Supreme Court, U.S.
FILED

952062 JUN 24 1996

OFFICE OF THE CLERK

No. _____

In The

Supreme Court of the United States

October Term, 1995

MULTNOMAH COUNTY, OREGON; JANET BOWDLE; and GEORGE KARCHER,

Petitioners,

v.

STEPHANIE G. PIERCE,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

GERALD H. ITKIN, Assistant County Counsel
Multnomah County Counsel
1120 SW Fifth Avenue, Suite 1530
PO Box 849
Portland, Oregon 97207-0849
Counsel of Record
for Petitioners
(503) 248-3138

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

51 pp

QUESTIONS PRESENTED

1. Whether the Fourth Amendment's "objective reasonableness" standard or the Fourteenth Amendment's guarantee of substantive due process governs excessive force claims made by inmates against corrections officers arising post-arrest and pre-arraignment in a detention facility?

2. Whether the Fourth Amendment's objective reasonableness standard or the Fourteenth Amendment's guarantee of substantive due process governs claims by inmates arising post-arrest and pre-arraignment regarding conditions of confinement inside a detention facility?

LIST OF ALL PARTIES

Petitioners Multnomah County, Janet Bowdle and George Karcher were the defendants in the district court and the appellees in the court of appeals.

Respondent Stephanie Pierce was the plaintiff in the district court and the appellant in the court of appeals.

The Tri-County Metropolitan Transportation District of Oregon, the City of Portland and Steve Duncan were also defendants in the district court. The City of Portland and Steve Duncan were appellees in the court of appeals but are not parties in this Court.

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED i

LIST OF ALL PARTIES ii

TABLE OF AUTHORITIES iv

OPINIONS BELOW 1

JURISDICTION 1

CONSTITUTIONAL PROVISIONS 1

STATEMENT OF THE CASE 2

REASONS FOR GRANTING THE PETITION 5

1. The Ninth Circuit has decided an important question of law that has not been, but should be, settled by this Court 7

2. The circuits are split on the question whether the Fourth Amendment applies in evaluating post-arrest excessive force claims 9

   a. The Second Circuit 10

   b. The Fourth Circuit 10

   c. The Fifth Circuit 11

   d. The Seventh Circuit 11

   e. The Tenth Circuit 11

   f. The Eleventh Circuit 12

3. The Ninth Circuit's decision in this case is contrary to the decisions of this Court concerning conditions of confinement 13

Conclusion 15

Appendix

Ninth Circuit Court of Appeals Decision ..... App. 1

TABLE OF AUTHORITIES

Page

CASES

Austin v. Hamilton, 945 F 2d 1155 (10th Cir 1991) 11

Bell v. Wolfish, 441 US 520, 99 S Ct 1861, 60 L Ed 2d 447 (1979) 8, 13, 14

Brothers v. Klevenhagen, 28 F 3rd 452 (5th Cir 1994); cert denied ___ US ___, 115 S Ct 639 (1994) 9, 11

County of Riverside v. McLaughlin, 500 US 44, 111 S Ct 1661, 114 L Ed 2d 49 (1991) 6, 7, 13, 14

Farmer v. Brennan, ___ US ___, 114 S Ct 1970, 128 L Ed 2d 811 (1994) 13

Frohmader v. Wagner, 958 F 2d 1024 (10th Cir 1992) 12

Gerstein v. Pugh, 420 US 103, 95 S Ct 854, 43 L Ed 2d 54 (1975) 7, 13, 14

Graham v. Connors, 490 US 386, 109 S Ct 1865, 104 L Ed 2d 443 (1989) 5, 7, 12

Hallstrom v. City of Garden City, 991 F 2d 1473 (9th Cir 1993) 6

Hudson v. McMillian, 503 US ___, 112 S Ct 995, 117 L Ed 2d 156 (1992) 5

Kinney v. Indiana Youth Center, 950 F 2d 462 (7th Cir 1991) 11

Powell v. Gardner, 891 F 2d 1039 (2nd Cir 1989) 10

U.S. v. Cobb, 905 F 2d 784 (4th Cir 1990) 10

Valencia v. Wiggins, 981 F 2d 1440 (5th Cir 1993); cert. denied ___ US ___, 113 S Ct 2998, 125 L Ed 2d 691 (1993) 9

TABLE OF AUTHORITIES – Continued

Page

Vineyard v. County of Muray, GA, 990 F 2d 1207 (11th Cir 1993) 12

Wilkins v. May, 872 F 2d 190 (7th Cir 1989); cert denied 493 US 1026, 110 S Ct 733, 127 L Ed 2d 125 (1990) 9, 11

STATUTES AND RULES

ORS 133.045, 133.055, 181.160 (5) 3

US Const. amend IV ..... *passim*

US Const. amend XIV § 1 ..... 2, 5, 10

28 USC § 1254(1) 1

OPINIONS BELOW

The Ninth Circuit reversed a jury verdict in favor of the defendant corrections officers on an inmate's excessive force claims. The court of appeal found that the trial court erred by giving a Fourteenth Amendment jury instruction instead of a Fourth Amendment jury instruction. Plaintiff's claims arose from incidents occurring in a detention facility post-arrest but prior to arraignment. The Ninth Circuit's opinion, reversing and remanding the jury verdict in favor of the defendants, is reproduced in the Appendix at page App-1.

JURISDICTION

The opinion and the judgment of the court of appeals were entered on February 14, 1996. Petitioner filed a petition for rehearing en banc on February 27, 1996 with the Ninth Circuit Court of Appeals. The petition for rehearing was denied and the suggestion for rehearing en banc was rejected on March 27, 1996.

This Court has jurisdiction under 28 USC § 1254 (1).

CONSTITUTIONAL PROVISIONS

U.S. Const. amend. IV provides, in pertinent part, as follows:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated . . .

U.S. Const. amend. XIV § 1 provides, in pertinent part, as follows:

> . . . nor shall any State deprive any person of life, liberty, or property, without due process of law . . .

STATEMENT OF THE CASE

On September 12, 1988, plaintiff boarded a train in Portland without purchasing a ticket for her ride. A fare inspector asked her for proof of payment and identification. Plaintiff told him that she did not have a ticket nor did she have identification.

The fare inspector and plaintiff disembarked the train. The fare inspector then called the police (Portland Police Department). For a period of time both the police officer and the fare inspector tried to establish plaintiff's identity. Simultaneously, plaintiff tried to convince them both that she should not get a ticket for boarding the train without paying the fare.

The police officer received conflicting information from plaintiff and over the police radio. He felt that he was unable to verify her identity. After issuing a cite-in-lieu to plaintiff for furnishing false information to a police officer, he took plaintiff into custody, handcuffed her and transported her to the Multnomah County Detention Center (MCDC). MCDC is a detention facility operated by Multnomah County and staffed by corrections

officers.[1] Tens of thousands of inmates are processed through MCDC per year and 400 plus inmates are housed in this facility on a daily basis.

When they arrived at MCDC the police officer gave the jail staff a custody report which included a cite-in-lieu charging plaintiff with furnishing false information to a police officer, a jailable misdemeanor offense.[2]

All inmates whether they are brought to MCDC on a warrant or without a warrant, on a probation detainer or on a cite-in-lieu, for a parole violation or when transferred from another agency must go through the same booking process. Once a person is placed in their custody for identification after issuance of a cite-in-lieu, the corrections officers at MCDC implement a process for identifying the person. The inmate is photographed and fingerprinted. A pat down search is conducted and personal property is removed and set aside. The inmate goes

---

[1] The duties and responsibilities of corrections officers include the custody, control and supervision of individuals convicted of or arrested for a criminal offense and confined in a place of incarceration or detention. (ORS 181.160(5)). They do not ordinarily arrest anyone.

[2] The cite-in-lieu process provides that when a person is subject to arrest on a misdemeanor or violation charge or on a felony charge which may be deemed a misdemeanor charge after sentencing, a peace officer in lieu of taking a person into custody may issue and serve a citation to appear in court before a magistrate. (ORS 133.045 and 133.055). The plaintiff was taken to MCDC pursuant to a City of Portland procedure which provided that when an officer issued a citation to a person and the identity of the person was questionable, the officer could take the person into custody and then to MCDC for positive identification.

to a nurse for screening and then to the holding area to wait for identification. Those who are "cite-in-lieu" and who can be identified are released within a few hours.

When Defendants Karcher and Bowdle attempted to book plaintiff they were met with resistance from plaintiff. The booking process did not proceed smoothly. Plaintiff did not respond to questions, would not stand still when told to do so, and kept moving during the pat down search. Plaintiff was agitated and the officers wondered whether she was just angry or if she was on drugs or drunk.

At one point plaintiff whirled around sharply with a raised arm and clenched fist stating that she had enough. Defendant Karcher grabbed her and controlled her with a "hair hold".[3] She was placed in a separation cell until she could calm down.

Later, just prior to plaintiff's release, plaintiff again became loud, threatening and uncooperative. Defendant Bowdle restrained plaintiff by using a hair hold and a wrist lock and placed her in a cell to calm down.

Plaintiff filed suit in district court. One of plaintiff's claims was that the Defendants Karcher and Bowdle violated her constitutional rights by their use of force. Plaintiff sought a jury instruction based on the Fourth

---

[3] A "hair hold" is a restraint technique used by corrections officers. The officer grasps the inmate's hair at the root. This technique is used if the officer cannot control the situation by using verbal commands. The hair hold is a physical contact technique used to overcome resistance or compel an inmate to conduct themselves in a specified manner.

Amendment. The defendants argued for a jury instruction based on the Fourteenth Amendment because the case involved corrections officers, not arresting officers, and because the incident arose in a detention facility following an arrest. The district court judge chose to give defendant's Fourteenth Ame dment jury instruction.[4]

The Ninth Circuit found that the district court erred by giving defendant's Fourteenth Amendment subjective intent jury instruction.[5]

REASONS FOR GRANTING THE PETITION

In *Graham v. Connors*, 490 US 386, 109 S Ct 1865, 104 L Ed 2d 443 (1989), this Court adopted an objective standard for use of force claims arising from incidents during an arrest. However, *Graham* left unresolved the question whether the Fourth Amendment continues to provide individuals with protection against the deliberate use of excessive force beyond the point at which arrest ends. Moreover, *Graham* left unanswered the related questions: When does an arrest or seizure end? When does "pre-

[4] The jury instruction given by the district court was whether the force was applied (1) in a good faith effort to maintain or restore discipline or (2) maliciously and sadistically to cause harm. *Hudson v. McMillian*, 503 US ___, 117 L Ed 2d 156, 112 S Ct 995 (1992).

[5] The Ninth Circuit characterized the jury instruction given on the force claim as an Eighth Amendment instruction. However, the record clearly shows that both plaintiff and defendant as well as the district court acknowledged that the jury instruction dispute involved whether the court should apply a Fourteenth or Fourth Amendment standard.

trial" detention – as that term is used in constitutional law – begin? What constitutional standard applies to conditions of confinement claims arising from incidents post-arrest and pre-arraignment in a detention facility?

The Ninth Circuit in its decision adopts the Fourth Amendment "objective reasonableness" standard for application not only in excessive force cases, but for all claims involving any condition of confinement up to the time of an inmate's arraignment.[6]

The Ninth Circuit's decision in effect mandates that corrections officers in all detention facilities similar to MCDC must apply varying standards when using force in a jail. When handling two inmates, one a pre-arraignment inmate and one a post-arraignment inmate, who are standing side by side exhibiting the same type of violent and disruptive behavior, the conduct of corrections officers will be measured by two different standards. The imposition of this type of decision making process on

---

[6] In *Hallstrom v. City of Garden City*, 991 F 2d 1473 (9th Cir 1993), the Ninth Circuit left open what standard should be applied to post-arrest, pre-arraignment claims involving various conditions of confinement claims including diet, medical needs, access to phone, fresh air and exercise, restrictions on religious expression.

Since inmates can be confined for 48 hours before arraignment, (*County of Riverside v. McLaughlin*, 500 US 44, 114 L Ed 2d 49, 111 S Ct 1661 (1991)), a pre-arraignment inmate would be exposed to all conditions of confinement, e.g., food, air, diet, sleeping quarters, exercise of religion, etc. The effect of the decision in this case is that every condition of confinement to which a post-arrest, pre-arraignment detainee is exposed will have to meet a Fourth Amendment standard.

corrections officers during emergency situations threatens the safety and security of detention facilities.

This Court should grant certiorari to consider and resolve the substantial questions of law presented by this Ninth Circuit decision.

1. The Ninth Circuit has decided an important question of law that has not been, but should be, settled by this Court.

The important legal question left open by this Court in *Graham v. Connors, supra,* is answered by the Ninth Circuit in this case by the creation of a fiction that an arrest continues beyond the actual arrest. This decision creates an unwarranted expansion of Fourth Amendment constitutional claims.

While recognizing that *Graham* only applies to excessive force claims during arrest, the Ninth Circuit nonetheless adopts the fiction of "continuing seizure" post-arrest but pre-arraignment. In addition to relying on decisions of the Second and Tenth circuit courts (discussed below), the Ninth Circuit reaches this result by equating conditions of confinement, including use of force, with duration of or legal justification for the type of prolonged, warrantless, post-arrest, pre-arraignment custody discussed by this Court in *County of Riverside v. McLaughlin,* 500 US 44, 111 S Ct 1661, 114 L Ed 2d 49 (1991) and *Gerstein v. Pugh,* 420 US 103, 43 L Ed 2d 54, 95 S Ct 854 (1975).

The Ninth Circuit equates conditions of confinement in detention facilities with reasonable time before a probable cause determination. Although the Fourth Amendment only speaks to the reasonableness of searches and seizures, the Ninth Circuit extends this amendment to include the reasonableness of use of force, diet, exercise, practice of religion, i.e., *all* conditions of confinement in detention facilities, post-arrest and pre-arraignment.

In so doing the Ninth Circuit ignores this Court's discussion in *Bell v. Wolfish*, 441 US 520, 99 S Ct 1861, 60 L Ed 2d 447 (1979) regarding the application of the Fourth Amendment to issues of safety and security inside a detention facility, including issues concerning the smuggling of drugs and weapons. In *Bell v. Wolfish, supra*, this Court recognized that "a detention facility is a unique place fraught with serious security dangers" and that the "operation of our correctional facilities is peculiarly the province of the Legislative and Executive Branches of our Government, not the Judicial". (99 S Ct at 1879, 1884)[7] The *Bell* Court also recognized that maintaining institutional security and preserving internal order and discipline are essential goals in a detention facility which may require limitation or retraction of the constitutional rights of inmates. (99 S Ct at 1878)

---

[7] The Ninth Circuit chose to focus on the fact that plaintiff was at MCDC for identification purposes. Another important fact however was that plaintiff was brought into the facility on a cite-in-lieu for a jailable misdemeanor. The Ninth Circuit also chose to ignore the fact that the facility in which the alleged use of force arose was not a police station jail; it was a large detention facility which processes tens of thousands of inmates per year.

This case presents an important and recurring question of constitutional jurisprudence, which is still unsettled by this Court. It should now be finally and definitively resolved.[8]

2. The circuits are split on the question whether the Fourth Amendment applies in evaluating post-arrest excessive force claims.

The Ninth Circuit's ruling in *Pierce*, as well as decisions of the Second and Tenth Circuits, are directly contrary to the decisions of other circuits in post-arrest excessive force cases.

The Second, Ninth and Tenth Circuits characterize a "seizure" under the Fourth Amendment as a process that continues until the person is arraigned. The Fourth, Fifth, Seventh and Eleventh Circuits on the other hand limit the Fourth Amendment protection to the initial act of seizure reasoning that one cannot seize what is already seized. These Circuits apply a Fourteenth Amendment standard.

The split in the circuits arose because this Court specifically left open the question of whether the Fourth Amendment continues to provide individuals with protection against the deliberate use of excessive force beyond the point at which arrest ends. The question of

---

[8] Since 1989 four petitions for writ of certiorari have been filed asking for clarification of this question. See *Wilkins v. May*, 872 F 2d 190 (7th Cir 1989); cert denied 493 US 1026, 110 S Ct 733, 127 L Ed 2d 125 (1990); *Valencia v. Wiggins*, 981 F 2d 1440 (5th Cir 1993); cert. denied ___ US ___, 125 L Ed 2d 691, 113 S Ct 2998 (1993); *Brothers v. Klevenhagen*, 28 F 3rd 452 (5th Cir 1994); cert denied ___ US ___, 115 S Ct 639 (1994).

whether Fourth Amendment or substantive due process principles should govern determination of post-arrest excessive force claims – or even whether the Fourth Amendment continues to have any force or effect after an arrest has been completed – is one which has divided the courts of appeal. This conflict should be resolved by this court.

a. The Second Circuit

The excessive force claim in *Powell v. Gardner,* 891 F 2d 1039 (2nd Cir 1989) arose from alleged use of excessive force by the arresting officers at the police station. The court held that the Fourth Amendment standard probably should be applied prior to the time when the person arrested is arraigned or formally charged *and remains in the custody of the arresting officers.* The court acknowledged however that this Court in *Graham v. Connor* left open the question of whether the pure objective reasonableness test is the appropriate standard in post-arrest excessive force cases (891 F 2d at 10430).

b. The Fourth Circuit

U.S. v. Cobb, 905 F 2d 784 (4th Cir. 1990) involved a criminal prosecution for depriving a pretrial detainee of civil rights by willfully subjecting him to excessive use of force. *The arresting officers* were convicted based on evidence showing that they had beaten the arrestee for two hours in the booking room. The Court found that the victim was a pre-trial detainee and therefore applied the Fourteenth Amendment excessive force standard. (905 F 2d 784, 788-789)

c. The Fifth Circuit

In *Brothers v. Klevenhagen*, 28 F 3d 452 (5th Cir), an arrestee attempted to escape from a patrol car parked in the sally port area of a county jail while the arresting officers were checking in their weapons. The Fifth Circuit applied a due process rather than a Fourth Amendment standard for determining whether the officers used excessive force. Once an individual is arrested and placed in police custody, and surely after an arresting officer has transferred the individual to a jail cell, the individual becomes a pre-trial detainee protected by the due process clause. (28 F 3d at 456-457)

d. The Seventh Circuit

In another escape attempt case, the Seventh Circuit found that in between arrest and conviction, the due process clause applies to excessive force claims. (*Kinney v. Indiana Youth Center*, 950 F 2d 462 (7th Cir 1991)). This decision follows the reasoning of *Wilkins v. May*, 872 F 2d 190 (7th Cir 1989) in which the court explicitly rejected the concept of "continuing seizure" once the person is arrested and is in custody. (Id. at 193-194). In *Wilkins*, the excessive force claims arose from incidents occurring during an interrogation.

e. The Tenth Circuit

In *Austin v. Hamiliton*, 945 F 2d 1155 (10th Cir 1991), plaintiff was detained and questioned by federal agents. The plaintiffs alleged use of excessive force during the interrogation. The Tenth Circuit held that the Fourth

Amendment standard governs the treatment of an arrestee detained without a warrant. (Id. at 1155, 1160). In *Frohmader v. Wagner*, 958 F 2d 1024 (10th Cir 1992), a post-arrest, pre-arraignment excessive force claim arising from incidents that occurred inside a jail, the Tenth Circuit stated that the Fourth Amendment governs claims of post-arrest excessive force brought by arrestees detained without a warrant who have not yet been brought before a judicial officer.

f. The Eleventh Circuit

In *Vineyard v. County of Muray, GA*, 990 F 2d 1207 (11th Cir 1993), an arrestee brought an excessive force claim against the arresting officers alleging that they threatened and beat him while he was handcuffed to a hospital bed after he was arrested. The court, classifying the arrestee plaintiff as a pre-trial detainee, found that the law was unclear as to whether or not a pretrial detainee can state a claim under the Fourth Amendment. The court analyzed the plaintiff's claims under the Fourteenth Amendment which "protects a pretrial detainee from the use of excessive force that amounts to punishment". (Id. at 1211).

Seven circuit courts of appeal have addressed the issue of the standard to be applied to use of force cases post-arrest. The divergence found in these opinions underscores the need for this Court to address the issues left open by *Graham v. Connor, supra.*

3. The Ninth Circuit's decision in this case is contrary to the decisions of this Court concerning conditions of confinement.

Although this case is concerned with how jail authorities operate a jail rather than how long a prisoner may be held by jail authorities, the Ninth Circuit chose to rely on decisions of this Court which concerned the duration and length of pre-arraignment detention (*County of Riverside v. McLaughlin, supra,* and *Gerstein v. Pugh, supra*) rather than decisions of this Court concerned with conditions of confinement within a correctional facility (*Bell v. Wolfish, supra*).

Moreover, this decision is contrary to this Court's clear differentiation in applying standards applicable to conditions of confinement and to use of force in prison cases. In *Farmer v. Brennan,* ___ US ___, 114 S Ct 1970, 128 L Ed 2d 811 (1994), this Court noted that while the deliberate indifference standard is applicable to most conditions of confinement in a prison, a different standard is applicable to use of force cases. This Court noted that decisions of prison officials are typically made "in haste, under pressure and frequently without the luxury of a second chance". (114 S Ct at 1978). It is difficult to see how a different standard should be applied merely because the incident occurs during post-arrest, pre-arraignment incarceration.

Neither of the decisions of this Court, *County of Riverside* or *Gerstein,* upon which the Ninth Circuit relied in deciding this case, support a theory of "continuing seizure". These cases only apply the Fourth Amendment to the need for a probable cause hearing in order to continue

detention. Rather than characterizing the continued detention as a "continuing seizure" under the Fourth Amendment, the *Gerstein* court holds that once a person is in custody the situation is changed and the person is now in pretrial confinement (95 S Ct at 863).

County of Riverside and *Gerstein* apply the Fourth Amendment in a very restrictive manner to pretrial detention procedure, i.e., the requirement for a probable cause hearing. These cases are limited to such procedures. There is no indication that the Court wanted the Fourth Amendment principles enunciated in these cases expanded to include all conditions of confinement, including use of force, post-arrest and pre-arraignment. However, there is clear direction given by this Court in *Bell v. Wolfish, supra,* that jail authorities rather than the courts should manage the operation of correctional facilities. The decision by the Ninth Circuit in this case completely ignores this direction.

CONCLUSION

The importance of the questions presented by this case, the recurring petitions to this Court concerning these questions, the clear split in the circuit courts on these issues and the conflict between the decision in this case and the decisions of this Court justify granting this petition for certiorari.

DATED this 21st day of June, 1996.

Respectfully submitted,

LAURENCE KRESSEL, *County Counsel for Multnomah County, Oregon*

GERALD H. ITKIN, OSB #88232
Assistant County Counsel
Of Attorneys for Petitioners

FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

STEPHANIE G. PIERCE, *Plaintiff-Appellant,* v. MULTNOMAH COUNTY, OREGON; CITY OF PORTLAND, OREGON; TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON; STEVE DUNCAN; JANET BOWDLE; AND, GEORGE KARCHER, *Defendants-Appellees.*	No. 93-35405 D.C. No. CV-91-00518-HJF OPINION

Appeal from the United States District Court
for the District of Oregon
George E. Juba, Magistrate Judge, Presiding

Argued and Submitted
November 2, 1994 – Portland, Oregon

Filed February 14, 1996

Before: Betty B. Fletcher, Dorothy W. Nelson, and
Pamela Ann Rymer, Circuit Judges.

Opinion by Judge Fletcher,
Partial Concurrence and Partial Dissent by Judge Rymer

SUMMARY

Individual Rights/Civil Rights/Constitutional Rights

The court of appeals reversed a district court judgment, vacated an order, and remanded. The court held that the district court erred by directing a verdict for a city and a police officer on an individual's claim that her Fourth Amendment rights were violated by her custodial detention for identification for the infraction of failure to furnish proof of payment of a train fare.

A fare inspector stopped appellant Stephanie Pierce as she was boarding a Tri-County Metropolitan Transportation District of Oregon train and cited her for failing to produce proof of payment of fare. Pierce did not have any identification. Appellee police officer Steve Duncan arrived. After radioing the police computer, he was able to locate Pierce's name and address, and her arrest record. Pierce initially denied that she had ever been arrested, but later confirmed that she had previously been arrested for shoplifting.

Duncan charged Pierce with the misdemeanor of furnishing false information to a police officer and with failure to produce proof of payment of fare. She was handcuffed and searched. Pierce was transported to the Multnomah County Detention Center for a "firm" identification, photographed, screened by a nurse, fingerprinted, searched, and detained in a cell.

Pierce filed a civil rights action against appellees the City of Portland, Multnomah County, corrections officers

Janet Bowdle and George Karcher, and Duncan. She alleged that the defendants violated her Eighth and Fourth Amendment rights as well as federal and state law. Pierce inadvertently dismissed her claim against the County, and a magistrate judge denied her motion to reinstate the County as a defendant.

Pierce submitted evidence supporting a claim that the City had a policy of detaining persons who had committed offenses for which there is no statutory authority to arrest and delivering them to the County jail for "booking" in order to secure firm identification. At trial, the City and Duncan relied solely on the infraction of failure to furnish proof of payment of fare as the basis for Pierce's custodial detention. Pierce testified that she had given Duncan her name, date of birth, zip codes, addresses, and phone numbers. Pierce testified that during the approximately four hours she spent at the jail, she was assaulted by Karcher and Bowdle. A City police officer testified that he understood that he had the authority under Oregon law to take an offender to the station to perform an identification check, even in a situation in which the underlying offense did not carry a jail sentence.

At the close of Pierce's case-in-chief, the magistrate judge directed verdicts for the City and Duncan. The magistrate also directed a verdict for Bowdle on Pierce's Fourth Amendment claim for forcibly seizing her after she was released. The magistrate judge instructed the jury on Eighth Amendment standards pertaining to excessive force. The jury returned a verdict for the defendants on Pierce's excessive force claims against Bowdle

and Karcher. The court entered judgment for all defendants. Pierce appealed.

[1] The trial court erred by directing a verdict for the City and Duncan on Pierce's claim that her Fourth Amendment rights were violated by the custodial detention for identification for the fare-related infraction. [2] Disputes of fact precluded a directed verdict on Duncan's qualified immunity claim. [3] When an officer has obtained sufficient information to issue a citation, continued detention without probable cause to arrest for a crime is unreasonable. [4] If Pierce was correct and she was identified adequately at the train stop to permit issuance of a citation, Duncan's understanding of the relevant statute and his actions in reliance on it would not be objectively reasonable. [5] In regard to the City, Pierce presented sufficient evidence at trial that the City had a policy, practice, or custom of custodial detention for firm identification on nonarrestable offenses to withstand the directed verdict. [6] There was also sufficient evidence to conclude that the City's alleged policy was unconstitutional on its face to the extent it allowed arrests for nonarrestable offenses. [7] The Fourth Amendment requires that a seizure be supported by probable cause when the detention rises to the level of an arrest. [8] The City's policy of allowing booking and mugging for firm identification for nonarrestable offenses was not authorized under state law. [9] There was evidence from which the jury could have found that the City had an unconstitutional policy, or applied it in an unconstitutional manner.

[10] The trial court erred by instructing the jury to apply an Eighth Amendment standard in determining

whether Karcher and Bowdle applied excessive force to Pierce during the period she was detained in jail for identification. [11] Because Pierce was being detained merely for identification, she was not subject to punishment. [12] In light of precedent applying the Fourth Amendment standard to assess the constitutionality of the *duration of or legal justification* for a prolonged, warrantless, post-arrest, pre-arraignment custody, the Fourth Amendment was also to be applied to evaluate the *condition* of such custody. [13] The Fourth Amendment sets the applicable constitutional limitations on the treatment of an arrestee detained without a warrant up until the time that the arrestee is released or found to be legally in custody based upon probable cause for arrest. Thus, the trial court erred by failing to direct the jury to apply Fourth Amendment objective reasonableness standards to the use of force against Pierce at the jail. The jury verdict for Karcher and Bowdle was reversed.

[14] There was also merit in Pierce's claim that the magistrate erred by directing a verdict on her Fourth Amendment claim against Bowdle for unreasonable seizure. [15] A reasonable jury could find that although Pierce was still physically inside the detention center, she had been "released."

[16] The trial court abused its discretion by denying Pierce's request to reinstate the County.

[17] An order awarding costs to the defendants was vacated.

Circuit Judge Rymer concurred in part and dissented in part, seeing no basis for reversing the directed verdict in favor of the City.

COUNSEL

Stephanie G. Pierce, Pro Se, Portland, Oregon, for the plaintiff-appellant.

Gerald H. Itkin, Multnomah County Counsel, Portland, Oregon; Harry Auerbach, Deputy City Attorney, Portland, Oregon, for the defendants-appellees.

OPINION

FLETCHER, Circuit Judge:

Pro se[1] plaintiff Stephanie Pierce appeals an adverse judgment following a jury trial in her 42 U.S.C. § 1983 action. Plaintiff sued the City of Portland ("City"), Multnomah County ("County"), the Tri-County Metropolitan Transportation District of Oregon ("Tri-Met"), fare inspector Jackson, corrections officers Bowdle and Karcher, and police officer Duncan, alleging that the defendants violated her Eighth and Fourth Amendment rights and also violated federal and state law. She was detained for four hours for identification following a citation for boarding a train without proof of payment of fare. The parties tried the case before a magistrate judge, who directed verdicts for the City, Karcher, and Duncan. A jury returned a verdict for the defendants on the remaining claims. Upon denial of her motion for a new

[1] Plaintiff is a graduate of Georgetown University Law School. She has not practiced law since 1984.

trial, Pierce timely appealed. We have jurisdiction, 28 U.S.C. § 1291, and reverse and remand.

FACTS & PRIOR PROCEEDINGS

Fare inspector Jackson stopped Pierce as she was boarding a Tri-Met train and cited her for failing to produce proof of payment of fare. Pierce did not have any identification, so Jackson called the police to do an identification report. After police officer Duncan arrived, Pierce testified that she provided her name, date of birth, zip codes, addresses, and phone numbers – one for her residence and the other for her business – but refused to provide her social security number. Duncan radioed the police computer and was able to locate Pierce's name, a matching address, and her arrest record. When Duncan asked Pierce whether she had an arrest record, Pierce initially denied that she had ever been arrested. However, Pierce later confirmed his information that she had been arrested for shoplifting many years earlier. The radio check also included a Laidlaw residential address. Although Pierce did not have her driver's license with her, the police data base provided her driver's license number. The Laidlaw address and the Ankeny store address were both included on the completed citation.

Duncan ultimately charged Pierce with the misdemeanor of furnishing false information to a police officer, Or.Rev.Stat. § 162.385,[2] and with the failure to produce

---

[2] Oregon Revised Statute 162.385 states as follows:

(1) A person commits the crime of giving false information to a peace officer for a citation if the

proof of payment of fare, Tri-Met Code § 29.15. She was handcuffed and searched. Pierce testified that Duncan performed these tasks in an excessively rough manner. Pierce was taken by police car to and led in hand-cuffs through the Meier & Frank Department Store where officer Duncan had gone in order to question a shoplifter in an unrelated incident. Pierce was then transported to the Multnomah County Detention Center for a "firm" identification. At the jail, Pierce was photographed, screened by a nurse, fingerprinted, searched, and detained in a cell.

Pierce testified that during the approximately four hours she spent at the jail, she was assaulted by corrections officers Karcher and Bowdle. According to Pierce, the officers forcibly yanked her arm behind her back, shouted at her, grabbed her hair, and forced her back into a cell after she was told she was free to go. The defendants admit that they administered "control holds," but claim that the force was necessary because Pierce was distraught, demanding, abusive, and uncooperative during her detention.

---

person knowingly uses or gives a false or fictitious name, address or date of birth to any peace officer for the purpose of the officer's issuing or serving the person a citation under authority of ORS 133.045 to 133.080, 133.110 and 156.050.

(2) A person who violates this section commits a Class A misdemeanor.

Pierce filed a section 1983 action. She stipulated to the dismissal of Tri-Met, and the remaining parties consented to trial before Magistrate Judge Juba. Pierce inadvertently dismissed her claim against the County. The magistrate judge denied her motion to reinstate the County as a defendant.

At trial, the City and Duncan stipulated that the charge for furnishing false information was not the basis for their authority to detain Pierce. Rather, the City and Duncan relied solely on the infraction of failure to furnish proof of payment of fare as the basis for the plaintiff's custodial detention.

At the close of plaintiff's case-in-chief, the magistrate judge directed verdicts for the City and Duncan. The magistrate judge also directed a verdict for Bowdle on Pierce's Fourth Amendment claim for forcibly seizing her after she was released. The magistrate judge instructed the jury on Eighth Amendment standards pertaining to excessive force. It returned a verdict for the defendants on Pierce's excessive force claims against Bowdle and Karcher. Judgment was entered for all defendants. After Pierce's motion for a new trial was denied by the district court, she timely appealed.

DISCUSSION

I. Directed Verdict for City and Officer Duncan on Pierce's Fourth Amendment Claim

[1] Pierce argues first that the trial court erred by directing a verdict for the City and Duncan on her claim that her Fourth Amendment rights were violated by the

custodial detention for identification for the fare-beating infraction.[3] We agree.

We review de novo the grant of a directed verdict. *Zamalloa v. Hart*, 31 F.3d 911, 913 (9th Cir. 1994); *In re Hawaii Federal Asbestos Cases*, 960 F.2d 806, 816 (9th Cir. 1992). "[A] directed verdict is proper when the evidence permits only one reasonable conclusion as to the verdict." *McGonigle v. Combs*, 968 F.2d 810, 816 (9th Cir.), *cert. dismissed*, 506 U.S. 948 (1992). "If conflicting inferences may be drawn from the facts, the case must go to the jury." *Rutherford v. City of Berkeley*, 780 F.2d 1444, 1448 (9th Cir. 1986). Therefore, to uphold the directed verdict for Duncan and the City, we would have to determine that the evidence supported only a verdict in their favor.

A. *Duncan's Claim of Qualified Immunity*

As to Duncan, the factual dispute concerns whether Duncan reasonably could have believed the identifying information supplied by Pierce was inadequate or that the fare infraction warranted detention. We conclude that because Pierce presented evidence from which the jury could conclude that any such beliefs were unreasonable, Duncan was not entitled to a directed verdict on his claim

---

[3] Although Pierce appeals the directed verdict for Duncan in its entirety, which includes a state law malicious prosecution claim, her brief addresses only the Fourth Amendment claim. Therefore, we construe her claim on appeal as to Duncan as relating only to the Fourth Amendment claim, and we limit our decision accordingly. *See Leer v. Murphy*, 844 F.2d 628, 634 (9th Cir. 1988) (issues raised in brief but not supported by argument are deemed abandoned).

of qualified immunity. Accordingly, we reverse and remand for determination by the jury after both sides have introduced their evidence.

The doctrine of qualified immunity shields public officials performing discretionary functions under certain circumstances. *See Harlow v. Fitzgerald*, 457 U.S. 800, 812 (1982). The availability of qualified immunity "generally turns on the 'objective legal reasonableness' of the action, assessed in light of the legal rules that were 'clearly established' at the time it was taken." *Anderson v. Creighton*, 483 U.S. 635, 639 (1987) (quoting *Harlow*, 457 U.S. at 818, 819; *see generally Grossman v. City of Portland*, 33 F.3d 1200, 1209-10 (9th Cir. 1994) (ordinarily enforcement of an ordinance entitles officer to qualified immunity). However, qualified immunity is not available if, "in light of pre-existing law," the unlawfulness of the officer's conduct was "apparent." *Anderson*, 483 U.S. at 640. "[A]n officer who unlawfully enforces an ordinance in a particularly egregious manner, or in a manner which a reasonable officer would recognize exceeds the bounds of the ordinance will not be entitled to immunity even if there is no clear case law declaring . . . the officer's particular conduct unconstitutional." *Grossman*, 33 F.3d at 1209-10 (citing *Chew v. Gates*, 27 F.3d 1432, 1449-50 (9th Cir. 1994), *cert. denied*, 115 S. Ct. 1097 (1995)).

[2] Applying these principles to the case at hand, we conclude that disputes of fact preclude a directed verdict on Duncan's qualified immunity claim.

1. *Clearly Established Law*

The threshold issue in determining whether an officer's conduct is objectively legally reasonable is whether the law regarding the right that the plaintiff claims has been violated was "clearly established" at the time of the alleged violation. *Harlow*, 457 U.S. at 819. "The contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right." *Anderson v. Creighton*, 483 U.S. at 640. Thus, this standard demands that the right be sufficiently particularized to put potential defendants on notice that their conduct probably is unlawful. *See id.* (finding that "in the light of pre-existing law the unlawfulness must be apparent").

[3] Pierce claims that her de facto arrest by Duncan violated clearly established law because Duncan lacked authority to arrest her for identification after he had sufficient information for the issuance of the citation for the fare infraction. We agree. The length and scope of detention must be justified by the circumstances authorizing its initiation. *See Terry v. Ohio*, 392 U.S. 1, 16, 19 (1968). Thus, when an officer has obtained sufficient information to issue a citation, a continued detention without probable cause to arrest for a crime is unreasonable. *United States v. Luckett*, 484 F.2d 89, 90-91 (9th Cir. 1973) (per curiam) (finding that an individual stopped for jay-walking may be detained "only the time necessary to obtain satisfactory identification from the violator and to execute a traffic citation"); *see also McKenzie v. Lamb*, 738 F.2d 1005, 1008 (9th Cir. 1984) (holding that arrest

requires "objective evidence which would allow a reasonable officer to deduce that a particular individual has committed or is in the process of committing a criminal offense"); *United States v. Jennings*, 468 F.2d 111, 115 (9th Cir. 1972) (holding that, after an initial investigative inquiry on the street is completed, continued detention of an individual for fingerprinting and photographing is constitutionally invalid without probable cause to arrest).

2. *Objectively Reasonable Conduct*

The critical question, then, is whether Duncan's conduct in seizing and searching Pierce, conduct in which he engaged because he allegedly was not fully satisfied with her responses to his questions at the site of the initial stop, was objectively reasonable. If "the actions [the plaintiff] allege(s) [the officer] to have taken are actions that a reasonable officer could have believed lawful, then the officer is entitled to dismissal prior to discovery." *Anderson*, 483 U.S. at 646 n.6. Further proceedings are necessary only if there is a material factual dispute concerning what actions the officer took and the officer's version of what took place. *See Johnson v. Jones*, 115 S.Ct. 2151, 2156-59 (1995); *Anderson*, 483 U.S. at 646, n.6; *see also Act Up!/Portland v. Bagley*, 988 F.2d 868, 873 (9th Cir. 1993). "Factual disputes that are irrelevant or unnecessary will not be counted." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). The burden is on the defendant to establish the reasonableness of his or her actions. *Neely v. Feinstein*, 50 F.3d 1502, 1509 (9th Cir. 1995).

"In evaluating a custodial arrest executed by state officials, federal courts must determine the reasonableness of the arrest in reference to state law governing the arrest." *United States v. Mota*, 982 F.2d 1384, 1388 (9th Cir. 1993); *see also Barry v. Fowler*, 902 F.2d 770, 771 (9th Cir. 1990) (finding that arrest without probable cause that the arrestee committed a crime constitutes a violation of the Fourth Amendment). Officer Duncan contends that he relied on his understanding that informal custodial detention for identification was authorized under Oregon law, pursuant to Or. Rev. Stat. § 153.110 and the City's acknowledged policy interpreting that statute, without any need to satisfy the requirement of probable cause to arrest for an offense punishable by incarceration. Thus, he claims that his conduct in arresting Pierce for identification comports with the Fourth Amendment's reasonableness requirement. *See, e.g., Grossman v. City of Portland*, 33 F.3d 1200, 1209 (9th Cir. 1994) (finding that an officer who acts in reliance on a duly enacted ordinance usually is entitled to qualified immunity).

[4] However, "an officer who unlawfully enforces an ordinance in a particularly egregious manner, or in a manner which a reasonable officer would recognize exceeds the bounds of the ordinance, will not be entitled to immunity even if there is no clear case law declaring the ordinance or the officer's particular conduct unconstitutional." *Grossman*, 33 F.3d at 1209-10 (citing *Chew v. Gates*, 27 F.3d 1432, 1449-50 (9th Cir. 1994), *cert. denied*, 115 S.Ct. 1097 (1995)). Thus, if Pierce is correct and she was

identified adequately at the train stop to permit the issuance of the citation, Duncan's understanding of the statute and his actions in reliance thereon would not be objectively reasonable.

Duncan claims that Pierce's provision of her store address and her initial denial of any prior arrests cast sufficient doubt on her identity to permit him to detain her for firm identification at the jail facility. Pierce contends that she provided adequate information at the scene and that there was no basis for a further detention. Because the magistrate judge directed a verdict for Duncan at the close of the plaintiff's case-in-chief, the facts as to the sufficiency of Pierce's identification and justification for detention for a fare infraction were not fully resolved at trial. Because these foundational facts remain in dispute and could be decided in Pierce's favor by a jury, we conclude that Duncan is not entitled to qualified immunity on directed verdict. These facts must be determined by the jury before Duncan's qualified immunity claim can be resolved. For this reason, the magistrate judge erred by granting a directed verdict for Duncan on this issue.

B. *City's Liability*

We next turn to whether the trial court erred by directing a verdict for the City. To prevail on her Section 1983 claim against the City, Pierce must show that the City adhered to a "policy, practice or custom" that caused her to be deprived of her constitutional rights. *City of Canton v. Harris*, 489 U.S. 378 (1989); *see also Monell v. New York City Dep't of Social Servs.*, 436 U.S. 658 (1978);

Thompson v. City of Los Angeles, 885 F.2d 1439, 1444 (9th Cir. 1989). Pierce submitted evidence in support of her claim that the City had a policy of detaining persons who had committed offenses for which there is no statutory authority to arrest and delivering them to the County jail for "booking" in order to secure a firm identification. Pierce argues that this policy violated her Fourth Amendment right to be free from unreasonable searches and seizures.

To uphold the directed verdict for the City, we would have to conclude as a matter of law that the evidence introduced by Pierce in her case-in-chief allowed no other conclusion but that the City had no policy or practice of detaining persons for identification in violation of the Fourth Amendment, or that, if it had a policy or practice, the evidence allowed of no other conclusion than that the policy was not applied to Pierce in a way that violated her constitutional rights. *See Kennedy v. Los Angeles Police Dep't*, 901 F.2d 702, 705-06 (9th Cir. 1989).

The City acknowledged that it had a custodial-detention-for-identification policy but argued that its standard procedures were authorized by law and were constitutional. At the pre-trial conference, counsel for the City conceded that the City had a policy or practice of detaining individuals for firm identification in situations such as this where a law enforcement officer had probable cause to issue a fare citation for a nonarrestable offense; in fact, the attorney for the City acknowledged that the policy requires that the individual be held in the facility for a mug shot even after there is an order to release for lack of probable cause for arrest. The City argued that there was no factual dispute regarding the policy, but

merely a question of law regarding the constitutionality of detention for collection of identification records even when there is no probable cause for arrest.

[5] Although these concessions of policy by the City were not presented as evidence to the jury and are therefore not considered in our directed verdict analysis, we conclude that Pierce presented sufficient evidence at trial that the City had a policy, practice, or custom of custodial detention for firm identification on nonarrestable offenses to withstand the directed verdict. City of Portland Police Officer Kane testified on cross-examination in plaintiff's case-in-chief that he understood that he had the authority under Oregon law to take an offender to the station to perform an identification check, even in a situation in which the underlying offense did not carry a jail sentence. Based on this, a jury could reasonably conclude that the City authorized such custodial detention for identification, i.e., that it had a policy of permitting such detention.[4] Kane's additional reference to other instances

---

[4] When Kane testified that he understood he had authority to take an offender into custody in order to perform an identification check, he relied on Or. Rev. Stat. § 153.110. That statute, however, specifically states that "[a]ny person authorized to issue citations pursuant to this section *may not arrest* for violation of the infraction but may *detain* any individual reasonably believed to have committed a violation, only so long as is necessary to determine, for the purposes of issuing a citation, the identity of the violator." Or. Rev. Stat. § 153.110(3) (emphasis added). As the statute does not itself authorize custodial detention, Kane's testimony certainly suggests that his employer the City had a policy of implementing the statute in such a way as to permit such detention.

of officers taking suspects to the station for firm identification on nonarrestable offenses reasonably supports a finding of a City custom or practice of custodial detention for identification. Additionally, ID technician Pittock testified that he had seen instances of police officers bringing in citations that said "furnishing false information" without an accompanying underlying charge, as in the instant case. As the officers bringing in citations to the center included City police officers, it is reasonable to infer that there was a City custom or practice of custodial detention for identification even when there was no independently arrestable offense. Drawing all reasonable inferences in the light most favorable to Pierce, there was sufficient evidence of a City policy, practice or custom of custodial detention for firm identification on infractions. Thus, the magistrate judge erred in directing a verdict for the City of Portland on the basis that "there is no evidence of any custom or policy."

[6] There was also sufficient evidence to conclude that the City's alleged policy is unconstitutional on its face to the extent that it allows arrests for nonarrestable offenses. The extent of the permitted invasions of the individual's Fourth Amendment rights depends on the gravity of the offense. The alleged constitutional violation at issue here stems from the Fourth Amendment's guarantee that government officials may not subject citizens to unreasonable searches or seizures without proper authorization. In this context, the Fourth Amendment requires that the length and scope of a detention be "strictly tied to and justified by the circumstances which rendered its initiation permissible." *Terry v. Ohio*, 392 U.S. 1, 16, 19 (1968).

[7] Although police need only a reasonable suspicion of criminal activity to conduct a brief investigatory detention, *see, e.g., id.* at 30, the Fourth Amendment demands that the seizure be supported by probable cause when that detention rises to the level of an arrest. *See, e.g., Dunaway v. New York*, 442 U.S. 200, 212-14 (1979) (finding that "the treatment of petitioner, whether or not it is technically characterized as an arrest, must be supported by probable cause"); *Brown v. Texas*, 443 U.S. 47, 50-52(1979); *cf. Kolender v. Lawson*, 461 U.S. 352, 365 (1983) (Brennan, J., concurring) ("Detention beyond the limits of *Terry* without probable cause would improve the effectiveness of legitimate police investigations by only a small margin, but it would expose individual members of the public to exponential increases in both the intrusiveness of the encounter and the risk that police officers would abuse their discretion for improper ends."). The Fourth Amendment's protections are not limited to traditional, full-fledged arrest, but apply whenever "police, without probable cause or a warrant, forcibly remove a person from his home or other place in which he is entitled to be and transport him to the police station, where he is detained, although briefly, for investigative purposes." *Hayes v. Florida*, 470 U.S. 811, 816 (1985).

The City argued that its blanket policy of allowing custody for firm identification was constitutional based on its interpretation of the statutory grant of authority to detain for identification for violations of infractions. *See* Or. Rev. Stat. § 153.110(3).[5] However, that statute

---

[5] The City and Duncan also point to *State v. Tucker*, 595 P.2d 1364 (Or. 1979). Although *Tucker* allows jail detention for

expressly *denies* authority to arrest for infractions. *Id.*[6] In addition, Oregon courts have interpreted the statute as providing only a *limited* authority to stop and detain that is short of a full arrest. *See, e.g., State v. Farley,* Or. App. 764 P.2d 230, 231-32 n.2 (1988) (stating that the legislature's purpose in passing the statute was to permit issuance of citations "without giving [officers] full powers of arrest and detention"), *rev'd on other grounds,* 775 P.2d 835 (Or. 1989).

Even when offenses are involved for which police officers have explicit statutory authority to arrest, Oregon courts have held that police officers *cannot* lodge a person in jail under full custodial arrest unless they have other grounds apart from the minor traffic violation itself. *See*

---

identification when an officer has been given conflicting name and birthdate information, it interpreted a statute which provides for a full-fledged arrest for the offense involved. Section 153.110, however, states explicitly that the officer "may not arrest." Or. Rev. Stat. § 153.110(3); *see also* note 4 *infra.* Consequently, *Tucker* is not controlling here.

[6] 153.110. Persons who may enforce infractions; issuance of citation; arrest prohibited.

. . .

> (3) Any person authorized to issue citations pursuant to this section *may not arrest* for violation of the infraction *but may detain* any individual reasonably believed to have committed a violation . . . *only so long as is necessary to determine, for the purposes of issuing a citation, the identity of the violator* and such additional information as is appropriate for law enforcement agencies in the state.

Or. Rev. Stat. § 153.110(3).

Easton v. Hurita, 625 P.2d 1290, 1295 (Or. 1981) (interpreting Or. Rev. Stat. § 484.100(1), which provides that police officers *may arrest* a person for a traffic offense). This limitation is based on the "valid concern about police harassment of people charged with relatively innocuous traffic infractions" and the fact that a full custody arrest entails "be[ing] taken to jail and booked and . . . a complete search of his person." *Id.*, at 1295, 1296 (citation omitted). As an example of the "rare instance" when custody would be appropriate for such a minor, arrestable traffic violation, the *Easton* court quoted the legislative history's reference to a situation where "the driver's license [that the arrested individual] displays may be sufficiently different from his physical description to project that he is proceeding under an alias and may be wanted." *Id.* at 1296. Thus, even when the police may arrest a traffic offender, the Oregon court has strictly limited detention to the "minimum necessary for identification and citation." *Id.* at 1294.

[8] Here, the only basis for the custodial arrest and post-arrest detention was the claimed need to verify Pierce's identification for citation for a *non-arrestable offense* and the City's and County's practice of creating a complete identification record, including taking mug shots and finger-printing, even after the individual detained has been firmly identified. Given Oregon's stringent controls on booking for identification even when the underlying offense is arrestable, we conclude that the City's policy of allowing booking and mugging for firm identification for nonarrestable offenses is not authorized under state law. If the state has decriminalized conduct by denying the City and its officers the authority to arrest

for a particular offense, then the City is acting unreasonably when it permits its officers to proceed as though they had the authority to arrest for the offense.

We agree with the Seventh Circuit that a particular arrest is objectively reasonable "so long as the police are doing no more than they are legally permitted and objectively authorized to do." *United States v. Trigg*, 878 F.2d 1037, 1041 (7th Cir. 1989). Thus, in order for an arrest to be reasonable for Fourth Amendment purposes the arresting officer must have probable cause and must be "authorized by state and or municipal law to effect a custodial arrest for the particular offense." *Id.; see also Thomas v. State*, 614 So.2d 468, 471 (Fla. 1993) (holding that a custodial arrest for a minor traffic citation not punishable by incarceration is unreasonable and violates the Fourth Amendment).

[9] Because there was evidence from which the jury could have found that the City had an unconstitutional policy, or applied it in an unconstitutional manner, we conclude that the magistrate judge erred by directing a verdict for the City on Pierce's *Monell* claim. Accordingly, we reverse and remand.

II. Jury Verdict for Karcher and Bowdle for Pierce's Excessive Force Claim

[10] In addition, Pierce claims that the trial court erred by instructing the jury to apply an Eighth Amendment standard in determining whether officers Karcher and Bowdle applied excessive force to Pierce during the period that she was detained in the jail for identification.

We agree. The determination of the appropriate constitutional standard to govern treatment during the various stages of custody is a question of law subject to de novo review. *Graham v. Connor*, 490 U.S. 386, 392-93 (1989).

[11] Defendants contend that the Eighth Amendment governs excessive force claims inside a jail facility. This claim must fail, however, because the Eighth Amendment's prohibition against the malicious or sadistic use of force, *see Hudson v. McMillian*, 503 U.S. 1, (1992), does not apply "until after conviction and sentence," *Graham*, 490 U.S. at 392 n.6; *Ingraham v. Wright*, 430 U.S. 651, 671 n.40, (1977) ("Eighth Amendment scrutiny is appropriate only after the State has complied with the constitutional guarantees traditionally associated with criminal prosecutions."). Because Pierce was being detained merely for identification, she was not subject to punishment. Therefore, the defendants' assertion that Eighth Amendment malicious punishment standards apply to her claim is incorrect as a matter of law.

To decide the appropriate standard, we must determine what constitutional protection governs this particular juncture of the custodial continuum. *See, e.g., Austin v. Hamilton*, 945 F.2d 1155, 1158 (10th Cir. 1991) (noting that "the custodial continuum run[s] through initial arrest or seizure, post-arrest but pre-charge or pre-hearing custody, pretrial detention, and post-conviction incarceration"). Although the *Graham* Court held that the Fourth Amendment objective reasonableness standard governs claims based on the use of excessive force during arrest, it did "not resolve[ ] the question whether the Fourth Amendment continues to provide individuals with protection against the deliberate use of excessive force

beyond the point at which arrest ends and pretrial detention begins." *Graham*, 490 U.S. at 395 n.10. However, it made clear that pre-trial detainees are protected by the Constitution from excessive force that amounts to punishment. *See id.* (noting that "the Due Process Clause protects a pretrial detainee from the use of excess force that amounts to punishment"); *Redman v. County of San Diego*, 942 F.2d 1435, 1441 (9th Cir. 1991) (en banc) (applying the due process standard to a pretrial detainee who was raped by another inmate when he was transferred, after a week in the "young and tender" module, into an area housing the general jail population), *cert. denied*, 502 U.S. 1074 (1992). In another case involving an arrestee held for six days without arraignment or a probable cause hearing, we applied the substantive due process standard without considering whether the Fourth Amendment protections would apply, noting that such an individual "is entitled *at least* to the protections afforded pretrial detainees." *Hallstrom v. City of Garden City*, 991 F.2d 1473, 1485 (9th Cir. 1993) (emphasis added), *cert. denied*, 114 S.Ct. 549, (1993).

In a pre-*Graham* case, we held that the seizure that constitutes arrest "continues throughout the time the arrestee is in the custody of the arresting officers" and thus any use of excessive force during this extended arrest period is subject to the Fourth Amendment's constraints. *Robins v. Harum*, 773 F.2d 1004, 1010 (9th Cir. 1985). Here, Pierce argues that the Fourth Amendment should also provide the standard for the conditions of detention, when an arrestee is kept at a facility for booking procedures without a probable cause or arraignment hearing. Thus, unless we assume that the initial seizure

continues beyond the time that the arrestee is in the custody of the arresting officers, we must address the question not addressed in *Hallstrom* – whether the Fourth Amendment continues to protect an arrestee during the second custodial stage, post-arrest but pre-arraignment.

[12] We find the discussions in *Austin*, 945 F.2d at 1158-60, and *Powell v. Gardner*, 891 F.2d 1039, 1043-44 (2d Cir. 1989), persuasive. Individuals who have been arrested without a warrant and brought to a detention facility are subject to custodial detention involving isolation in a cell interspersed with the various administrative procedures of the booking process prior to arraignment or a probable cause hearing. We are persuaded by precedent which applies the Fourth Amendment standard to assess the constitutionality of the *duration* of or *legal justification* for a prolonged warrantless, post-arrest, pre-arraignment custody, *see, e.g., County of Riverside v. McLaughlin*, 500 U.S. 44 (1991); *Gerstein v. Pugh*, 420 U.S. 103, 125 (1975); *Hallstrom*, 991 F.2d at 1477-83, that the Fourth Amendment should also apply to evaluate the *condition* of such custody. *See Austin*, 945 F.2d at 1158-60; *Powell*, 891 F.2d at 1043-44.

[13] We hold, therefore, that the Fourth Amendment sets the applicable constitutional limitations on the treatment of an arrestee detained without a warrant up until the time such arrestee is released or found to be legally in custody based upon probable cause for arrest. Accordingly, we conclude that the trial court erred by failing to direct the jury to apply Fourth Amendment objective reasonableness standards to the use of force against Pierce at the jail. We reverse the jury verdict for defendants Karcher and Bowdle.

III. Directed Verdict for Bowdle on Pierce's Fourth Amendment Unreasonable Seizure Claim

[14] Pierce also claims that the magistrate erred by directing a verdict on Pierce's Fourth Amendment claim against Bowdle for unreasonable seizure. We find that this claim has merit.

[15] Pierce alleged that Bowdle violated her Fourth Amendment rights by seizing her and returning her to a cell after she had been released from the detention center. The magistrate directed a verdict for the defendant based on Pierce's own testimony which indicated that she was still in the process of being released. However, we do not find that Pierce's testimony mandates the magistrate judge's conclusion. According to Pierce, Officer Bowdle asked if she wanted to go and said that she was being released. Based on these statements, a reasonable jury could find that although Pierce was still physically inside the detention center, she had been "released" because Bowdle had indicated that Pierce was free to go and by implication that the officer lacked any further authority to detain her. If this is the case, then a subsequent seizure could be in violation of Pierce's Fourth Amendment rights.

Because there was a basis for a reasonable juror to conclude that Bowdle's actions violated Pierce's Fourth Amendment rights, a directed verdict was inappropriate.

IV. Motion to Reinstate Multnomah County as a Defendant

[16] Pierce claims that the trial court abused its discretion by denying her request to reinstate Multnomah County. We agree.

A denial of a motion for leave to amend after a responsive pleading has been filed is reviewed for an abuse of discretion, *National Abortions Fed'n v. Operation Rescue*, 8 F.3d 680, 681 (9th Cir. 1993), "but such denial is 'strictly' reviewed in light of the strong policy permitting amendment," *Unigard Sec. Ins. Co. v. Lakewood Eng'g & Mfg. Corp.*, 982 F.2d 363, 371 (9th Cir. 1992) (quoting *Texaco, Inc. v. Ponsoldt*, 939 F.2d 794, 798 (9th Cir. 1991)). A "leave [to amend] shall be freely given when justice so requires." Fed. R. Civ. P. 15(a). The refusal to grant leave without any apparent justifying reason is an abuse of discretion. *Foman v. Davis*, 371 U.S. 178, 182 (1962). "Valid reasons for denying leave to amend include undue delay, bad faith, prejudice, and futility." *California Architectural Bldg. Prod., Inc. v. Franciscan Ceramics, Inc.*, 818 F.2d 1466, 1472 (9th Cir. 1987), *cert. denied*, 484 U.S. 1006 (1988). We find that the magistrate judge abused his discretion because there is no valid reason to deny Pierce's motion to reinstate the County as a defendant.

About one month before trial, Pierce inadvertently dropped the County from the suit by mistakenly copying the defendant's proposed order into her pre-trial order. Pierce, recognizing her mistake, quickly sought to correct it by moving to reinstate the County during the pre-trial conference. The magistrate judge denied this motion.

Although the magistrate judge did not state his reasons for denying Pierce's motion, the following facts are clear. The County had participated fully in the case until it was inadvertently dropped from the suit in January 1993, one month before trial.[7] The County's absence from the suit would have been for only a very brief time had the magistrate judge reinstated it as a defendant. It was prepared for trial. We conclude that the magistrate judge abused his discretion.

The magistrate judge's denial of Pierce's motion to amend her complaint to include the County is reversed. We remand to the district court with instructions to allow the filing of an amended complaint that includes the County.

V. Other Claims

[17] Because we reverse the verdicts, we need not reach Pierce's additional claims that the trial court erred by denying her motion for a new trial and her claims of

---

[7] The defendants argue that Pierce abandoned the County as a defendant nearly one year before trial in her Proposed Pretrial Order of March 30, 1992. However, our examination of that document reveals that Pierce did not abandon her claims against the County at that time. To the contrary, she was vigorously asserting those claims. *See, e.g.*, Plaintiff's Proposed Pre-trial Order, at 4 ("Plaintiff also maintains that the defendants Bawdle [sic], Karcher, and *Multnomah County* are liable under the pendent state claims and for the adoption of policy, ratification of conduct and/or under the doctrine of respondiat [sic] superior.") (emphasis added). Consequently, we find the defendants' factual assertion to be without basis.

error concerning various evidentiary rulings by the magistrate judge. However, because the defendants are no longer prevailing parties, we vacate the order awarding costs to the defendants. *See* Fed. R. Civ. P. 54(d).

CONCLUSION

The order awarding costs to the defendants is **VACATED**. The judgment of the district court is **REVERSED**, and the case is **REMANDED** for further proceedings in accordance with this opinion.

REVERSED and **REMANDED**.

RYMER, Circuit Judge, concurring in part and dissenting in part:

I join the majority's opinion except for Part I, where I agree with the result (but not the dicta) as to Duncan and disagree with both the reasoning and the result as to the City.

Whether or not Pierce had been identified adequately at the time Duncan decided to transport her to the county detention center for firm identification is an issue of fact that is disputed. This unresolved issue of fact bears on whether Duncan could reasonably have believed that taking Pierce to the detention center violated clearly established federal law. That is all that needs to be said, or that can be said on the state of the record. Therefore, the majority's apparent conclusion that Pierce's "de facto arrest by Duncan violated clearly established law because Duncan lacked authority to arrest her for identification after he had sufficient information for the issuance of the citation for the fare infraction," maj. op. at 1446, must

simply be a statement that *if* all those things were true, he should not have qualified immunity in the majority's view.

I see no basis for reversing the directed verdict in favor of the City of Portland. No matter what the City did or did not "acknowledge" pre-trial, there is no evidence from which a reasonable factfinder could conclude that any policy existed – let alone a policy, practice or custom of "custodial detention for identification," or "custodial detention for identification even when there was no independently arrestable offense," or "custodial detention for firm identification on infractions," or "arrests for nonarrestable offenses," as the majority opinion variously characterizes it. There is no way that one can figure out what the City's custom or policy may have been from what officers Kane and Pittock testified was the practice at the county detention center, or from Kane's (erroneous) belief that ORS § 153.110 gave him authority to take an offender into custody to perform an identification check. Accordingly, I believe the district court should be affirmed.

(2)

95-2062

No.

Supreme Court, U.S.
FILED
OCT 30 1995
CLERK

In The

Supreme Court of the United States

October Term, 1995

MULTNOMAH COUNTY, OREGON; JANET BOWDLE; and GEORGE KARCHER,

Petitioners,

v.

STEPHANIE G. PIERCE,

Respondent.

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Ninth Circuit

BRIEF IN OPPOSITION

Stephanie G. Pierce
720 S.W. Ankeny
Portland, Oregon 97205
(503)226-3671

Respondent PRO SE

46 pp

TABLE OF CONTENTS

TABLE OF AUTHORITIES.....ii

COUNTERSTATEMENT OF THE CASE

A. The Arrest.....1
B. Detention at MCDC.....2
C. Assault by Defendant Karcher.....5
D. Assault by Defendant Bowdle.....8
E. The Jury Instruction.....9

REASONS FOR DENYING THE WRIT.....10

I. PLAINTIFF WAS NOT DETAINED IN THE USUAL FASHION. UNLIKE THE USUAL PREARRAIGNMENT DETENTION, PLAINTIFF'S CUSTODY WAS NOT LAWFUL, NOR WAS IT A CONTINUATION OF HER ARREST.....11

II. THERE IS NO CONFLICT AMONG THE CIRCUITS ON THE CONSTITUTIONAL STANDARD FOR EXCESSIVE FORCE CLAIMS BROUGHT BY DETAINEES HELD PURSUANT TO A WARRANTLESS ARREST.....15

III. IT IS NOT REASONABLE TO ALLOW A POLICE OFFICER UNFETTERED POWER TO PUNISH PERSONS SUSPECTED OF A MINOR OFFENSE BY SUBJECTING THEM TO CONDITIONS AND RESTRICTIONS DESIGNED FOR DANGEROUS CRIMINALS.....21

CONCLUSION.....26

TABLE OF AUTHORITIES

CASES

Albright v. Oliver, ___U.S.___,114 S.Ct. 807 (1994), reh. denied, 114 S.Ct. 1340.....23
Arizona v. Evans, 115 S.Ct. 1185, 1192 (1996).....13
Austin v. Hamilton, 945 F.2d 1155 (10th Cir. 1991.)..20
Bell v. Wolfish, 441 U.S. 520, 99 S.Ct. 1861(1979).....24,25
Bender v. Bromley, 1 F.3d 271 (5th Cir. 1993).....18
Boswell v. Sherbourne County, 849 F.2d 1117 (8th Cir.1988).....22
Brothers v. Klevenhagen, 28 F.3d 452 (5th Cir. 1994), cert. denied ___U.S.___, 115 S.Ct. 639 (1994).....18
Cooper v. Dyke, 814 F.2d 941 (4th Cir.1987).....17
County of Riverside v. McLaughlin, 500 U.S. 44, 111 S.Ct. 1661 (1991).....23,24
Farmer v. Brennan, 114 S.Ct. 1970 (1994).....21,25
Frohmader v. Wagner, 958 F.2d 1024 (10th Cir. 1992)...20
Garcia v. City of Chicago, Ill., 24 F.3d 966, 970 n.6 (7th Cir. 1994).....20
Gerstein v. Pugh, 420 U.S. 103, 95 S.Ct. 854 (1975).....19,23,24
Graham v. Connors, 490 U.S. 386, 109 S.Ct. 1865(1989).....12,22,23
Hudson v. McMillan, 503U.S.___, 112 S.Ct.995(1992).....18
Illinois v. Lafayette, 462 U.S. 640, 645 (1983).....24
Johnson v. Glick, 481 F.2d 1028 (2d Cir. 1973), cert. denied 414 U.S. 1039, 94 S.Ct.462.....12
Kinney v. Indiana Youth Center, 950 F.2d 462 (7th Cir. 1991).....19
Masters v. Crouch, 872 F.2d 1248 (6th Cir. 1989).....22
Powell v. Gardner, 891 F.2d 1039 (2d Cir. 1989) 16
Reed v. City of Chicago, 77 F.3d 1049, 1052 (7th Cir. 1996).....19
Sweatt v. Bailey, 876 F.Supp. 1571 (M.D. Ala. 1995)...12

Telfair v. Gilberg, 868 F.Supp 1396 (S.D. Ga. 1994)...22
Tennessee v. Garner, 471 U.S. 1 (1985).....23
Titran v. Ackman, 893 F.2d 145 (7th Cir. 1990).....12
United States v. Henlsley,
469 U.S. 221, 105 S.Ct. 675 (1985).....13
U.S. v. Cobb, 905 F.2d 1039 (4th Cir. 1990).....16,17
U.S. v. James Daniel Good Real Property,
114 S.Ct.492,499 (1993).....23
U.S. v. Myers, 972 F.2d 1566 (11th Cir 1992),
cert. denied ___U.S.___ 21
Valencia v. Wiggins, 981 F.2d 1440 (5th Cir.1993),
cert. denied 113 S.Ct. 2998 (1993).....18,19
Villanova v. Abrams, 972 F.2d 792 (7th Cir. 1992).....20
Vineyard v. County of Murray, GA.,
990 F.2d 1207 (11th Cir. 1993).....20
Watt v. Richardson, 849 F.2d 195 (5th Cir. 1988).....22
Whiteley v. Warden, 401 U.S. 560,
91S.Ct. 1031 (1971).....12
Whitley v. Albers, 475 U.S. 312 (1986).....21
Whren v. U.S. 116 S.Ct. 1769 (1996).....11
Wilson v. Williams,
83 F.3d 870, 877 (7th Cir. 1996).....21

STATUTES AND RULES

Oregon Revised Statutes
ORS 133.045.....4
ORS 133.055.....4
ORS 133.310.....4
ORS 153.110.....3
ORS 161.505.....3
ORS 161.515.....3
ORS 161.565.....3
ORS 161.575.....3
ORS 162.385.....3

MCDC Operational Procedures
010.112.036.....4
010.112.041.....5
010.112.053.....4

Bureau of Police General Orders
830.00.....3,4
860.30.....4

Police Standard Operating Procedure, Attch. A...5

Tri-Met Code
TMC 29.15.....3
TMC 29.35.....3
TMC 29.40.....3

APPENDIX

Tri-Met Code 29.15.....App.1
Tri-Met Code 29.35.....App.1
Tri-Met Code 29.40.....App.1

ORS 133.045.....App.2
ORS 133.055.....App.2
ORS 133.310.....App.2
ORS 153.110.....App.3
ORS 161.505.....App.3
ORS 161.515.....App.3
ORS 161.565.....App.4

MCDC OP 010.112.036.....App.5
MCDC OP 010.112.041.....App.5
MCDC OP 010.112.053.....App.5

Defendant Duncan's Custody Report.....App.6
Defendant Duncan's Misdemeanor Citation.....App.8
Fare Inspector's Citation.....App.9
Defendant Karcher's Hazard Report.....App.10
Defendant Karcher's Information
Follow Up Report.....App.12
Betty Evans' Information Follow Up Report....App.13
Police SOP Attachment A.....App.14

COUNTERSTATEMENT OF THE CASE

Petitioners have selectively ommitted and misstated facts that are necessary for a proper analysis of the constitutional issues in this case. A balanced look at the facts underscores the central aspect of the case: Respondent was an innocent arrestee wrongfully detained.

The Arrest

All parties stipulated that on September 12, 1988, as respondent (plaintiff below) was walking away from her store to catch a light rail train she was asked to call an ambulance for a comatose transient, and that she returned to her store and made the call at 5:20 p.m.(Reporter's Transcript (T) 14).

Plaintiff then waited about five minutes on the corner for the ambulance, which pulled up just as the light rail train was arriving one block away. Plaintiff ran and caught the train as it was leaving the stop without buying an 85 cent transfer from the ticket machine first. Plaintiff had already purchased three transfers that day, but was unable to locate the most recent one while making the call for the ambulance.

At 5:30 p.m. plaintiff was taken off the train by a fare inspector to be cited for no proof of fare. Becauseplaintiff did not have identification with her, the fare inspector called a Portland police officer, defendant Duncan, to verify her identity.

Plaintiff gave defendant Duncan her name, date of birth, her store address, her permanent residence address, zip codes, and two phone numbers at which she could be reached. The information plaintiff gave corresponded with what was available to defendant Duncan through the Portland police data base for the name Stephanie G. Pierce. When plaintiff refused to give her social security number to the fare inspector she was arrested.

Detention at MCDC

Plaintiff was presented for custody at Multnomah County Detention Center (MCDC) at 6:26 p.m. with the following paperwork: 1) defendant Duncan's custody report (App.6-7); 2) Defendant Duncan's misdemeanor citation charging plaintiff with the crime of furnishing false information to a police

officer (App.8)[1]; and 3) the fare inspector's infraction citation for non-payment of fare (App9).[2] On the custody report defendant Duncan marked probable cause as the basis for custody and left blank the box denoting cite in lieu. He also wrote a "lieu of cite" number and noted that the offense carried a $1500 bail.[3]

---

[1] *Oregon Revised Statutes (ORS) 162.385 "A person commits the crime of giving false information to a peace officer for a citation if the person knowingly uses or gives a false or fictitious name, address or date of birth to any peace officer for the purpose of the officer's issuing or serving the person a citation under authority of ORS 133.045 to 133.080, 133.110 and 156.050."*

2 *Non-payment of Fare is an infraction offense, as is furnishing false information to a fare inspector. Tri-Met Code 29.15 (B), (E); Tri-Met Code 29.35. (App.1) An infraction is not a crime in the state of Oregon. ORS 161.505,. 515, .565, .575. (App.3-4) Custodial arrest is not authorized for an infraction offense. ORS 153.110(3)(App.3); Tri-Met Code 29.40(App.1). On the non-payment of fare violation the fare inspector indicated that bail was $36.00.*

[3] *For that reason, petitioners' assertion that defendant Duncan gave the staff at MCDC a custody report that included a cite-in-lieu is not true. In fact, he gave them just the opposite. The custody report that defendant Duncan gave the MCDC staff was marked for a <u>probable cause</u> custodial arrest, not a cite in lieu arrest. A probable cause custodial arrest can be made for any Felony, Class A Misdemeanor or any unclassified offenses for which the maximum penalty allowed is equal to, or greater than, that allowed for a Class A Misdemeanor (1 year imprisonment and*

The custody report stated that there was no charge other than furnishing false information listed in the narrative. In the narrative, defendant Duncan wrote: "Defendant gave me a name/DOB/address. The address did not sound like a residential area...I asked her why she lied about her address and she stated the Ankeny address is her store." (App.7)

During plaintiff's detention at MCDC she was tracked as a cite-in-lieu.[4] *The change in her*

---

a $2500, fine). Bureau of Police General Order 830.00. On the other hand, Oregon statutes classify certain minor crimes for which citation alone is discretionary on the part of the officer. ORS 133.045, 133.055, 133.310. (app.2) The officer is authorized to issue a citation in lieu of custody based on the following guidelines: 1) Identity has been reasonably established; 2) officer reasonably believes offender will appear in court; 3) defendant not needed for further discussion of the case; 4) defendant resides, works, or attends school within court jurisdiction. Bureau of Police General Orders Section No. 860.30. In the event the offender meets the guidelines but verification of identity is needed, the officer has the authority to make a cite in lieu custodial arrest. Id.

[4] *Those booked in as cite-in-lieu are tracked separately and noted for identification processing only. MCDC Operational Procedure (MCDC OP) 010.112.036. (App.5) Contrary to petitioners' assertions, a cite in lieu must be released two hours after identification processing begins, regardless of whether a positive identification is made or not. MCDC OP 010.112.041,*

status from probable cause to cite in lieu was made by the MCDC staff pursuant to defendant Multnomah County's policy of accepting detainees on "special request by officers and/or detectives on minor infractions [to be] booked as cite in lieus for the purpose of obtaining fingerprints and a mug pho- to".[5]

The assault by defendant Karcher

Plaintiff was removed from the sally port cell for

010.112.053 (App.5). Initiation of the identification process was not dependent on justification for the detention, however, and even for a minor offense could be delayed indefinitely. (T419-424, 502, 548-49, 586,600, 605-607, 627). In plaintiff's case, it was delayed two hours, during which time she remained handcuffed with her hands behind her back in a cell.

[5] *Portland Police Standard Operating Procedure, Mug Shot Policy, Attachment A (App.14). The written SOP was not introduced as evidence at trial, but the attorney for defendant City of Portland repeated many times to the judge at the pretrial conference and in his motion for directed verdict that this was the official policy of the City of Portland and, by necessary implication, of Multnomah County (Pretrial Conference Transcript, pp.4-7, 82-83; T 485-486). At trial two officers testified as to the existence of this policy as well (T 402-403, 412-13, 421-22). See also Appellant's Brief, p.23, n.6.*

booking sometime between 6:26 and 8:43.[6] During the booking process, plaintiff was alone with two corrections officers, Betty Evans and defendant George Karcher (T589, T639-40,646).[7] Defendant Karcher was two feet to the right of plaintiff, inventorying the contents of plaintiff's pockets, while Betty Evans, one foot behind plaintiff on the left, emptied them.

When the missing transfer for the light rail train

---

[6] At trial plaintiff testified that she was removed from the sallyport cell two hours after her arrival, at approximately 8:20. According to petitioners, plaintiff was removed at 7:30. The evidence is conflicting, however: Petitioners testified that a visit to the nurse was the last part of booking. The nurse's report indicated that plaintiff was brought before her at 7:29. Defendant Karcher's incident report stated that the incident with plaintiff occurred during booking at 8:00 p.m. and that booking was resumed at 9:20. Plaintiff's custody report was time-stamped on the back that she entered MCDC at 6:26 and was in Cell RB02 (the second cell she was placed in after being assaulted by defendant Karcher) at 8:43. The date and time of each inmate movement, cell assignment and transfer to/from reception is stamped on the back of the federal time document. MCDC Post Orders, Intake/Holding Area I.

[7] At the time, plaintiff was 5'4" tall and weighed approximately 110 pounds (T615). Defendant Karcher was 6' tall and weighed approximately 185 pounds (T654). Betty Evans was 5'4" and weighed approximately 165 pounds (T609). In addition, there were heavy security doors that could be automatically closed to separate the booking area from the rest of the jail in the event of a disturbance (T582).

that plaintiff had been unable to locate during the call for the ambulance was removed by Officer Evans, plaintiff asked defendant Karcher if he would list it on her property receipt. Defendant Karcher refused plaintiff's request three times (T 649-50). According to contemporaneous reports filed by both Betty Evans and defendant Karcher the behavior that resulted in the use of a "hairhold" by defendant Karcher was the fact that plaintiff turned and walked away from defendant Karcher (App.10-13).[8] *After the hairhold Defendant Karcher physically placed plaintiff in a second cell, RB02.*

Defendant Karcher and Betty Evans both testified that a potential for violence was not a factor at the time of defendant Karcher's assault on plaintiff, nor was either one of them in fear for their personal safety. (T 618, 651, 655) The hairhold was used to "subdue" plaintiff. (T 618) It was "the quickest way to get control of the situation."(T 636)

---

[8] *Both defendant Karcher and Betty Evans testified at trial that the reports were more accurate than their independent memory of the incident (T 614, 660-62). Plaintiff's version of the events is completely different, but because the jury found in defendant Karcher's favor, this version of events is used as a worst case scenario of what she allegedly did to warrant application of a "hairhold", a pain compliance technique, see T692, 711..*

The assault by defendant Bowdle

At approximately 9:20 p.m. plaintiff was removed from cell RBO2 to get a mug shot taken and then was returned to the cell. At approximately 10:10 plaintiff was removed from the cell again for release.[9] *She asked officer Buffington for defendant Karcher's name. (RT721). Defendant Bowdle came over upon hearing this and plaintiff asked defendant Bowdle for defendant Karcher's name. Defendant Bowdle did not respond except to tell plaintiff to go to release. After plaintiff continued to ask for defendant Karcher's name, defendant Bowdle returned plaintiff to her cell by means of a "hairhold" and wrist lock.*[10]

---

[9] *The release procedure involved going down a hall to an elevator and then stopping at the property window to get property back (T699).*

[10] *Although the jury found for defendant Bowdle on the issue of excessive force, plaintiff's claim against Bowdle for an unconstitutional seizure has been renewed. For that reason, plaintiff includes her version of the relevant events that led to being returned to cell RB02 by defendant Bowdle: Immediately upon hearing plaintiff ask for defendant Karcher's name, defendant Bowdle ran over to plaintiff and said "Do you want to leave or do you want to stay." Plaintiff said she wanted to leave but she wanted to get the name of the officer who yanked her by her hair. Defendant Bowdle told plaintiff "Fine, if you don't want to go, you don't get to go," and, after motioning for Officer Buffington's assistance, immediately bent plaintiff's wrist and arm*

Plaintiff was released from MCDC at 10:20 p.m.

The Jury Instruction

Petitioners characterize the jury instruction pertaining to the use of force by defendants Karcher and Bowdle as being based exclusively on a 14th Amendment standard, not an Eighth Amendment standard. The instruction is quoted below:

> *The law recognizes that sometimes guards at detention facilities may be required to quell disturbances and restore order.*
>
> *You must determine whether the force used by defendants Bowdle or Karcher was applied in a good-faith effort to maintain or restore discipline, or whether the force used was applied maliciously and sadistically for the purpose of causing harm to the plaintiff. In making this determination, you are to consider such things as the need for the application of force, the rela tionship between the need and the amount of force that was used, and the extent of the injury.*

---

up behind her shoulder and proceeded to pull plaintiff by the hair on the top of her head back to RB02 (T122-23).

REASONS FOR DENYING THE WRIT

This Court should deny the petition for Writ of Certiorari for the following reasons:

1. This case would have limited precedential effect because the facts are atypical.

a. Plaintiff's arrest was admittedly without probable cause.

b. Plaintiff was knowingly accepted at MCDC without probable cause, an atypical independent post-arrest seizure.

c. Plaintiff was knowingly returned to her cell after she had been designated for release, a third atypical seizure.

2. The Ninth Circuit's opinion in this case is consistent with decisions in those Circuits that have addressed the issue.

3. Application of the Fourth Amendment in this case is consistent with this Court's prior decisions.

a. The constitutional violations at issue happened while plaintiff was being detained for verification of identity incident to an arrest that was justified solely on the basis of a police officer's on the scene assessment of probable cause to

believe that plaintiff had committed a minor offense.

b. Plaintiff was detained for identification only, she was not being held pending arraignment, bail or trial.

I. PLAINTIFF WAS NOT DETAINED IN THE USUAL FASHION. UNLIKE THE USUAL PRE-ARRAIGNMENT DETENTION, PLAINTIFF'S CUSTODY WAS NOT LAWFUL, NOR WAS IT A CONTINUATION OF HER ARREST.

It was stipulated at trial that defendant Duncan did not have probable cause to cite plaintiff for the crime of furnishing false information (T81-82). In addition, the Ninth Circuit has ruled that plaintiff's custodial arrest for identification purposes on the noncriminal, nonarrestable no proof of fare citation was unconstitutional because it was not authorized by Oregon law.[11] *Cf. Whren v. U.S. 116 S.Ct. 1769 (1996) (stop is constitutional if officers are doing no more than they are authorized to do by law, regardless of ulterior motive).*

---

[11] *None of the parties below challenge that holding.*

For that reason, this case is about an illegal arrest and the consequences that flow from it, nothing more. As such it has limited value for explicating a Constitutional standard for lawful detentions--the gap in constitutional protection between a warrantless arrest and the neutral decision by a magistrate that probable cause exists left unaddressed in Graham v. Connor, 109 S.Ct. 1865, 1871, n.10 (1989), has been plugged by a conceptual anomaly.[12]

Plaintiff never lost her Fourth Amendment protection despite the fact that she was arrested and put in jail at MCDC, because her arrest was made without probable cause. Cf. Whiteley v. Warden, 401 U.S. 560, 568, 91 S.Ct. 1031, 28

---

[12] *In any event, even if an arrestee in a detention facility does not have Fourth Amendment protection while being booked, protection under a substantive due process post-arrest non-seizure standard should be at least as great as the Fourth Amendment provides, not the Eighth Amendment. See Sweatt v. Bailey, 876 F.Supp.1571, 1581 (M.D. Ala. 1995); see also Titran v. Ackman, 893 F.2d 145, 147 (7th Cir.1990). It would be absurd to suggest that a person being arrested with probable cause has more rights than a person arrested without probable cause simply because excessive force was applied during post arrest detention rather than during arrest. Cf. Johnson v. Glick, 481 F.2d 1028, 1032 (2d Cir. 1973), cert. denied 414 U.S. 1033, 94 S.Ct. 462, 38 L.Ed.2d 32 (1988)(absurd to suggest that pretrial detainees do not have protection under the Fourteenth amendment at least as broad as convicted prisoners under the Eighth amendment).*

L.Ed.2d 306 (1971) (defendant did not lose his Fourth Amendment protection from illegal search just because officer who instigated warrant without probable cause relied on other officers to execute the warrant). For purposes of constitutional analysis, plaintiff was neither an arrestee nor a pretrial detainee, she was an innocent citizen wrongfully detained. As such she was entitled to Fourth Amendment protection throughout her stay at MCDC.

Petitioners' attempt to marginalize the Constitutional effect of plaintiff's illegal arrest by insisting that she was presented for custody at MCDC on a jailable misdemeanor offense is misleading. Where probable cause is lacking for an arrest, an officer cannot rely on information received from another officer unless it was objectively reasonable to do so. See Arizona v. Evans, 115 S.Ct. 1185, 1192 (1996) (citing United States v. Henlsley, 469 U.S. 221, 105 S.Ct. 675, 83 L.Ed.2d 604 (1985)). Here the paperwork for plaintiff's custodial detention was facially invalid--plaintiff's misdemeanor citation for furnishing false information did not have a companion citation for a misdemeanor offense, only for a noncriminal nonarrestable infraction. In addition, the narrative

in defendant Duncan's custody report contained no articulable facts that would have provided an independent basis for a finding of probable cause to believe that plaintiff committed a crime.

Moreover, petitioner's claim that plaintiff was presented to MCDC staff as a cite-in-lieu is not true. Plain-tiff was labelled a cite-in-lieu only after she was accepted at MCDC. The distinction is significant because MCDC staff, not defendant Duncan, acted deliberately in choosing to process plaintiff as a cite in lieu arrestee despite the fact that she was delivered to MCDC as a probable cause arrestee. That deliberate action, made in contravention of defendant Duncan's facially invalid paperwork, elevates the conduct of the MCDC staff to the equivalent of a separate seizure.

Plaintiff was not the victim of negligent oversight within the continuum of a custodial arrest when she was accepted into custody at MCDC. Therefore, the fact that she was not in defendant Duncan's custody when her claims for excessive force against defendants Kar-cher and Bowdle arose has no bearing on the source of Constitutional protection to which she is entitled. The deliberate actions of the MCDC staff in relying on

defendant Duncan's decision to detain plaintiff when it was objectively unreasonable to do so entitles her to renewed Fourth Amendment protection throughout her detention at MCDC.[13]

II. THERE IS NO CONFLICT AMONG THE CIRCUITS ON THE CONSTITUTIONAL STANDARD FOR EXCESSIVE FORCE CLAIMS BROUGHT BY DETAINEES HELD PURSUANT TO A WARRANTLESS ARREST.

Petitioners oversimplify the evolving post arrest

---

[13] *The enlarged strength of plaintiff's Fourth Amendment argument at this procedural juncture does not diminish the continued vitality of the argument plaintiff made below in the context of a legal arrest--a person arrested for a minor crime who is detained for identification purposes should not be subjected to restraints and conditions of confinement designed for dangerous criminals unless those constraints are reasonably related to the identification process, and reasonably short-lived. Here those conditions of confinement include the denial of a telephone call, of the opportunity to make bail, or to voluntarily submit to fingerprinting or go before a magistrate as an alternative to being incarcerated for identification; the fact that plaintiff was held for four hours, two hours of which she was handcuffed with her hands behind her back, as well as another hour during which she was detained solely for the purpose of having her mug shot taken, even after she had already been identified as who she said she was;and the fact that there was no warning given as to the serious consequences for asking even the most legitimate request of the corrections officers.*

pre-charge de-tainee standard in the circuit courts, and their assertion that there is a conflict among the circuits on this issue is mistaken. The Ninth Circuit's decision in the instant case is in harmony with the law in every circuit that has addressed the question of excessive force in a warrant-less post-arrest pre-Gerstein hearing setting.

The Second Circuit

Although it is true that one of the determining factors in Powell v. Gardner, 891 F.2d 1039 (2d Cir. 1989) and its use of a Fourth Amendment standard on post arrest excessive force was that the detainee was still in the custody of the arresting officer, the court made clear that the test was a minimum standard, noting that the Fourth Amendment applied "at least prior to the time when the person is arraigned or formally charged and remains in the custody...of the arresting officer." Id. at 1044 (emphasis added).

The Fourth Circuit

Petitioner's mischaracterize the legal effect of U.S. v. Cobb, 905 F.2d 1039 (4th Cir. 1990). It was not holding by the Fourth Circuit that the Fourteenth Amendment applies to claims of excessive force against arresting officers during booking. Al-

though the court broadly defined a pretrial detainee as one lawfully arrested and being held prior to a formal adjudication of guilt, it did so in the context of upholding a guilty verdict against the arresting officers. In doing so, the court expressly refused to answer the question of whether the Fourth Amendment or the Fourteenth amendment should apply, noting only that the detainee had met the burden of proof under either the Fourteenth or the Fourth Amendment. Id. at 788, n.7.

Cooper v. Dyke, 814 F.2d 941 (4th Cir.1987), cited by the 4th Circuit in U.S. v. Cobb, supra at 788 is more relevant. In that pre-Graham case, the court framed the standard for non-arrest detention in a substantive due process context, but noted that a significant factor for determining the extent of Constitutional protection was the fact that the detainee had not had a hearing to assess probable cause or to set bail. Cooper v. Dyke, supra at 949.

The Fifth Circuit

Historically, the Fifth Circuit has applied a Fourth Amendment standard on claims of excessive force by a pretrial detainee, although the case law is distorted by the Circuit's former "signifi-

cant injury" requirement on all excessive force claims.[14] *With that understanding in mind, the fact that Brothers v. Klevenhagen, 28 F.3d 452 (5th Cir. 1994), cert. denied ___U.S.___, 115 S.Ct. 639 (1994), applied a substantive due process standard to a detainee's attempted escape only hours after his arrest is not dispositive on the issue.*

Relying on Valencia v. Wiggins, 981 F.2d 1440 (5th Cir.1993), cert. denied ___U.S.___, 113 S.Ct. 2998, 125 L.Ed.2d 691 (1993), the Brothers court assumed pretrial detainee status by noting that the prisoner had been fully processed after his

---

[14] *For example, in Bender v. Bromley, 1 F.3d 271 (5th Cir. 1993) one of the cases relied on in Brothers v. Klevenhagen, infra, a detainee who had been beaten without leaving marks only hours after turning himself in for murder, objected to a Fourth Amendment excessive force instruction that was given at trial. His objection can be understood by the fact that Hudson v. McMillan, 503 U.S.___, 112 S.Ct. 995, 117 L.Ed.2d 156 (1992), a case that overturned the significant injury requirement for pretrial detainee claims of excessive force in the 14th Amendment substantive due process context, was pending on certiorari to the Supreme Court during the trial below. Assuming without analysis that the complainant was a pretrial detainee, the Fifth Circuit used Bender v. Brumley, supra at 277-78, to hold that significant injury was no longer an element ofa 14th Amendment excessive force claim under Hudson, supra. Tellingly, the court noted that significant injury was still an element of an arrestee's Fourth Amendment excessive force claim. Bender v. Bromley, supra at 278 n.7.*

arrest. Implicit in this assumption, however, is the fact that detention was justified by outstanding felony and misdemeanor warrants. Significantly, the court allowed that Fourth Amendment protection continues beyond the time of initial apprehension. Brothers, supra at 456.[15] *A warrantless arrest therefore could presumably still support the Fourth Amendment concept of continuing seizure even after booking.*

The Seventh Circuit

Petitioner's reliance on Kinney v. Indiana Youth Center, 950 F.2d 462 (7th Cir. 1991), an Eighth Amendment case, to create a conflict among the circuits pertaining to Fourth Amendment issues is likewise misplaced. The Seventh Circuit rule is clear that in the case of a warrantless arrest the Fourth Amendment applies post-arrest at least until a Gerstein hearing.[16] *See Reed v. City of*

---

[15] *The Valencia court left open the possibility that the concept of continuing seizure might be appropriate in other contexts, noting only that the three week detention at issue was too attenuated from the arrest to apply a Fourth Amendment standard.*

[16] *Gerstein v. Pugh, 420 U.S. 103, 95 S.Ct. 854, 43 L.Ed.2d 54 (1975) holds that the Fourth Amendment requires a judicial determination of probable cause as a prerequisite to extended restraint of liberty following arrest.*

Chicago, 77 F.3d 1049, 1052 (7th Cir. 1996); Garcia v. City of Chicago, Ill., 24 F.3d 966, 970 n.6 (7th Cir. 1994); Villanova v. Abrams, 972 F.2d 792, 797 (7th Cir. 1992).

The Tenth Circuit

Petitioners correctly state that the Tenth Circuit is squarely on point in Austin v. Hamilton, 945 F.2d 1155 (10th Cir. 1991) and Frohmader v. Wagner, 958 F.2d 1024 (10th Cir. 1992) in deciding that the Fourth Amendment applies to a warrantless post arrest pre-Gerstein hearing detention.

The Eleventh Circuit

Petitioners reference to Vineyard v. County of Murray, GA., 990 F.2d 1207 (11th Cir. 1993) as a case where a Fourteenth Amendment due process standard was applied to a claim of excessive force by an arrestee still in the custody of the arresting officers is not properly framed. In that case, the court clearly noted that application of a Fourth Amendment standard was equally viable, but that determination of the applicable standard was not necessary to uphold the verdict against the officers. Vineyard, supra at 1211. In fact, application of a Fourth Amendment standard against non-arresting officers who beat a DUI detainee

several hours after his arrest was upheld in U.S. v. Myers, 972 F.2d 1566 (11th Cir 1992), cert. denied, ___U.S.____.

III. IT IS NOT REASONABLE TO ALLOW A POLICE OFFICER UNFETTERED POWER TO PUNISH A PERSONS SUSPECTED OF A MINOR OFFENSE BY SUBJECTING THEM TO CONDITIONS AND RESTRICTIONS DESIGNED FOR DANGEROUS CRIMINALS.

The Ninth Circuit has correctly applied the law to this case.[17] *The fact that Farmer v. Brennan,*

---

[17] *Petitioners are wrong in claiming that the jury instruction on plaintiff's excessive force claim did not use an eighth amendment standard. Although it is true that pretrial discussion focussed on whether the instruction should be a Fourth or Fourteenth Amendment standard, see Plaintiff's Amended Trial Memorandum, pp.10-12, the instruction given clearly incorporated Eighth Amendment law in defining the Fourteenth Amendment standard that was used at trial. In addition, plaintiff, representing herself pro se in her first trial ever, objected to the use of prison riot language from Whitley v. Albers, 475 U.S. 312 (1986) to the effect that the law allows a prsion guard the right to dispel disturbances, on the explicit grounds that it was an Eighth Amendment standard that should require an actual disturbance prior to being used in a 14th Amendment context (T 761-63). Cf. Wilson v. Williams, 83 F.3d 870, 877 (7th Cir. 1996)(jury instruction allowing for good faith use of force in a disturbance was confusing where there was no separate finding that a jail disturbance in fact existed). The fact that a pretrial detainee is entitled to protection at least as great as the Eighth Amendment protection given*

___U.S.___, 114 S.Ct. 1970, 128 L.Ed.2d 811 (1994) mandates a dual standard that differentiates between excessive force claims and conditions of confinement claims in an Eighth Amendment context does not preclude a similar dual standard in a Fourth Amendment context: there is ample precedent by which to judge the objective reasonableness of decisions made in haste and under pressure in dangerous situations by analogizing excessive force arrest cases decided under the Fourth Amendment standard in Graham v. Connors, 490 U.S. 386, 109 S.Ct. 1865, 104 L.E.2d 443 (1989) to a prison context; an objective reasonableness conditions of confinement standard already applies in a prison context pertaining to strip searches for minor offenders. See, e.g., Masters v. Crouch, 872 F.2d 1248 (6th Cir. 1989); Watt v. Richardson, 849 F.2d 195 (5th Cir. 1988).

This Court made clear in Graham v. Connor, supra at 1870, that there is no single generic standard for bringing excessive force claims under 42 USC 1983. Similarly, there need be no generic

---

convicted prisoners does not mandate use of an Eighth Amendment standard even in a case where a Fourteenth Amendment standard is applied. See, e.g., Telfair v. Gilberg, 868 F.Supp 1396 (S.D. Ga. 1994); Boswell v. Sherbourne County, 849 F.2d 1117, 1121 (8th Cir.1988).

prison standard that applies to every person detained regardless of the constitutional right the detainee seeks to vindicate under 42 USC 1983. Yet that is what petitioners are asking this Court to establish.

After Albright v. Oliver, ___U.S.___, 114 S.Ct. 807 (1994), reh. denied, 114 S.Ct. 1340, there can be no doubt that the Fourth Amendment is the textual source of constitutional protection from which to vindicate a deprivation of liberty in the context of a criminal prosecution. See also U.S. v. James Daniel Good Real Property, 114 S.Ct.492,499 (1993). Moreover, in Graham v. Connor, supra at 1871, the Court repeated its holding in Tennessee v. Garner, 471 U.S. 1 (1985), that the Fourth Amendment covers not only when a seizure is made but how it is carried out. The Ninth Circuit's reliance on Gerstein v. Pugh, supra, and County of Riverside v. McLaughlin, 500 U.S. 44, 111 S.Ct. 1661, 114 L.Ed.2d 49 (1991) is not misplaced but on the contrary is merely the necessary application of Fourth Amendment law to the facts of how plaintiff's seizure in this case was carried out.

A police officer's on the scene assessment of

probable cause provides legal justification for arresting a person suspected of committing a crime, and for a brief period of detention to take the administrative steps incident to arrest. Gerstein, supra at 863. The steps incident to arrest are complete once the suspect has been booked, photographed, and fingerprinted. County of Riverside v. McLaughlin, supra at 1670-71; cf. Illinois v. Lafayette, 462 U.S. 640, 645 (1983) (taking an arrestee to the police station is no more than a continuation of the arrest).

In Bell v. Wolfish, 441 U.S. 520, 99 S.Ct. 1861, 60 L.Ed.2d 447 (1979) the Court did no more than agree that the objectives of insuring a pretrial detainee's appearance in court and in managing a prison were legitimate governmental purposes that could reasonably justify conditions and restrictions imposed on a person lawfully arrested. However, Bell v. Wolfish relied on Gerstein for the definition of a person lawfully arrested--one who has had a judicial determination of probable cause to believe he or she has committed a crime. Supra at 536.

A warrantless arrest does not meet the Gerstein prong of the Bell v. Wolfish test. Prison conditions and restrictions designed to insure a

lawfully arrested pretrial detainee's appearance in court and to facilitate prison management of dangerous criminals are punishment without more when applied to a person for whom there is no probable cause to arrest. For that reason, the imposition of those conditions and restrictions should not be justified solely on a police officer's on the scene assessement of probable cause to believe that a minor crime has been committed and that a person's identity may be in issue.[18]

The Ninth Circuit has correctly stated what the Framers of the Constitution intended and what this Court is charged with upholding: the government may not intrude upon a citizen's personal liberty except in a reasonable fashion. It is not reasonable to allow a police officer the unfettered power to punish a person suspected of a minor

---

[18] *Even under the Eighth Amendment, a convicted prisoner cannot be incarcerated under conditions posing a substantial risk of harm. Farmer v. Brennan, supra at 1977. Defendant Karcher's use of force was ratified throughout the MCDC chain of command. It is MCDC policy to treat all detainees, even those detained for identification on minor offenses as serious offenders (T600). The risk of substantial harm to a cite-in-lieu detainee who is not at least warned of this aspect of confinement is obvious, and should be grounds for a constitutional violation where the result is corporal punishment merely for asking legitimate questions such as requesting that evidence be documented or getting the name of an officer who yanked her around by her hair.*

offense by subjecting that person to constraints designed for dangerous criminals, even for a short period of time, unless the conditions of such a seizure are reasonably related to citing the person so detained.

CONCLUSION

Multnomah County's Petition for Writ of Certiorari should be denied.

Respectfully submitted,

Stephanie G. Pierce
720 S.W. Ankeny
Portland, Oregon 97205
(502) 568-5600

Respondent PRO SE

Tri-Met Code 29.15(B)

"It shall be unlawful for any person to occupy, ride in or use, any Tri-Met vehicle without carrying Proof of Fare Payment;"

Tri-Met Code 29.15(E)

"It shall be unlawful for any person...to provide a false name, address or identification [to a fare inspector]."

Tri-Met Code 29.35

"Penalties. A violation of TMC 29.15 shall be an infraction punishable by a fine of up to $250."

Tri-Met Code 29.40(A)

"[Fare inspectors] are authorized to issue citations pursuant to ORS Chapter 153 to any person who violates any provision of TMC Chapter 29."

ORS 133.045

(Citation in Lieu of Custody)

"ORS 133.055 shall apply in any instance when a person is subject to arrest on a misdemeanor or violation charge or on a felony charge which may be deemed a misdemeanor charge after sentence is imposed and:

(1)The arrest is made without a warrant pursuant to ORS 133.310..."

ORS 133.055

"(1) A peace officer in lieu of taking the person into custody may issue and serve a citation to the person to appear at the court of the magistrate before whom the person would be taken pursuant to ORS 133.450."

ORS 133.310

"**Authority of officer to arrest without warrant.** (1) A peace officer may arrest a person without a warrant if the officer has probable cause to believe that the person has committed any of the following....

(j) Any other offense in the officer's presence except traffic infractions as defined in ORS 153.505 and violations as defeind in ORS 161.565."

ORS 153.110(3)

"Any person authorized to issue citations pursuant to this section may not arrest for violation of the infraction but may detain any individual...reasonably believed to have committed a violation, only so long as is necessary to determine, for the purposes of issuing a citation, the identity of the violator and such additional information as is appropriate for law enforcement agencies in the state."

ORS 161.505

"An offense is conduct for which a sentence to a term of imprisonment or to a fine is provided by any law of this state...An offense is either a crime or a violation or an infraction."

ORS 161.515

"(1) A crime is an offense for which sentence of imprisonment is authorized.

(2) A crime is either a felony or a misdemeanor."

ORS 161.565

"(1) An offense is a violation if:

***

(b) The statute prescribing the penalty for the offense provides that the offense is punishable only by a fine, forfeiture, fine and forfeiture or other civil penalty..."

ORS 161.575

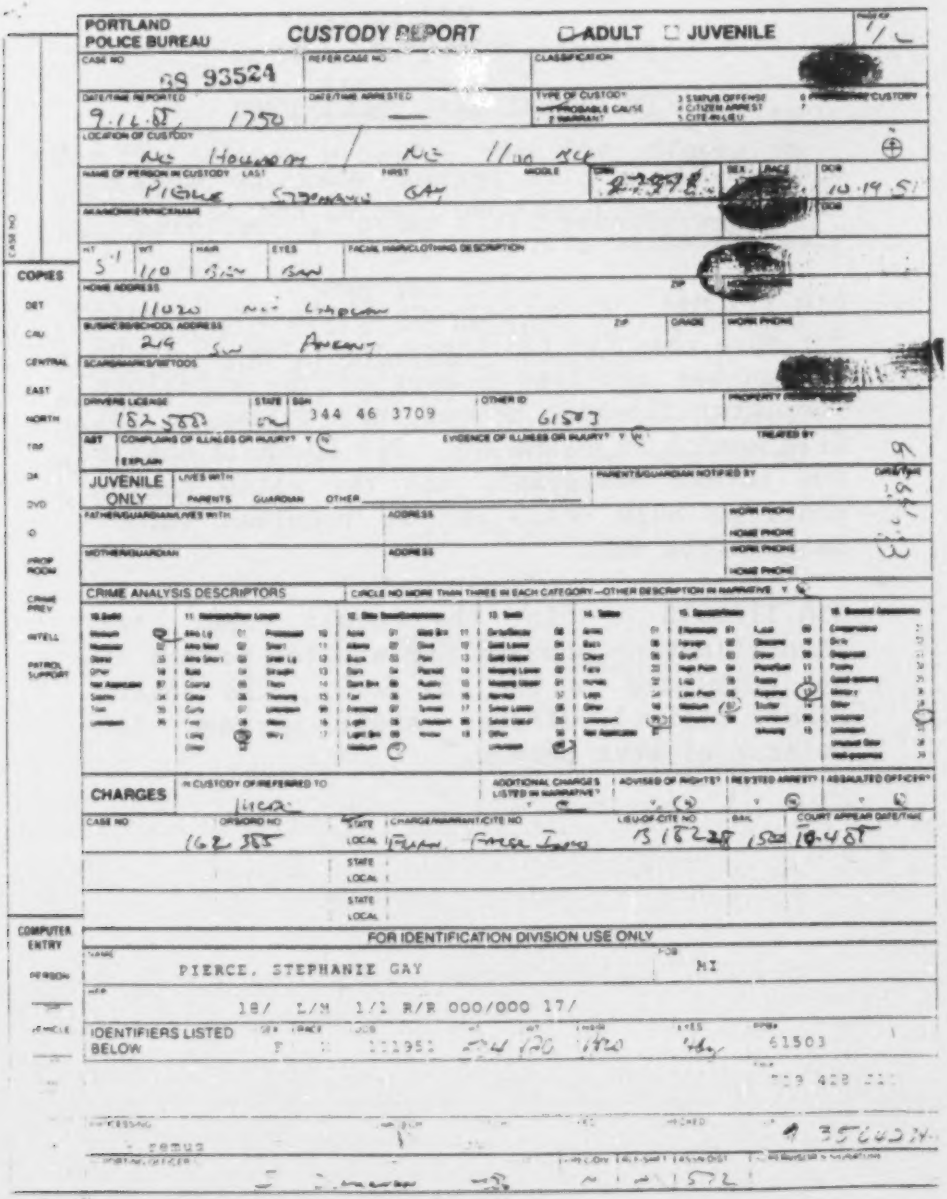
"(1) Any violation defined in the Oregon Criminal Code is expressly designated in the section defining the offense. Any offense defined outside this code which is punishable as provided in ORS 161.565 shall be considered a violation."

MCDC OPERATIONAL PROCEDURES

010.112.036 "Cited persons shall be entered in the Cite in Lieu count board, and noted for identification processing only."

010.112.041 "Cited persons shall not be held for more than two (2) hours after the ID technician has received a copy of the citations for identification processing, unless an FBI file search is necessary. PPB ID shall notify the Intake Seargeant, and the cited person shall be held until PPB ID receives information from FBI."

010.112.053 "In the event that the identification process for a cited person is not completed in the (2) hours, the Intake Floor Control Officer shall arrange the release of that person."



PORTLAND POLICE BUREAU

CUSTODY REPORT

☐ ADULT ☐ JUVENILE

CASE NO: 89 93524

REFER CASE NO:

CLASSIFICATION:

DATE/TIME REPORTED: 9.14.89 1750

DATE/TIME ARRESTED:

TYPE OF CUSTODY: 1 PROBABLE CAUSE 2 WARRANT 3 STATUS OFFENSE 4 CITIZEN ARREST 5 CITE-RELEASE

LOCATION OF CUSTODY: NE Holman / NE 11th Ave

NAME OF PERSON IN CUSTODY: LAST PIERCE FIRST STEPHANIE MIDDLE GAY

SEX F RACE W DOB 10.19.51

HT 5'1 WT 110 HAIR BLN EYES GRN

HOME ADDRESS: 11020 NE Holman

BUSINESS/SCHOOL ADDRESS: 214 SW Ankeny

DRIVERS LICENSE: 1825881 STATE OR SSN: 344 46 3709 OTHER ID: 61503

COPIES: DET CAU CENTRAL EAST NORTH TIM DA DVD ID PROP ROOM CRIME PREV INTELL PATROL SUPPORT

JUVENILE ONLY — LIVES WITH: PARENTS GUARDIAN OTHER

FATHER/GUARDIAN LIVES WITH: ADDRESS: WORK PHONE: HOME PHONE:

MOTHER/GUARDIAN: ADDRESS: WORK PHONE: HOME PHONE:

CRIME ANALYSIS DESCRIPTORS — CIRCLE NO MORE THAN THREE IN EACH CATEGORY—OTHER DESCRIPTION IN NARRATIVE

CHARGES — IN CUSTODY OF/REFERRED TO: Lieca

CASE NO	ORI/BOND NO	STATE/LOCAL	CHARGE/WARRANT/CITE NO	LIEU-OF-CITE NO	BAIL	COURT APPEAR DATE/TIME
	162 385	LOCAL	Felon in Poss Firearm	3182381	1500	10.4.89
		STATE / LOCAL				
		STATE / LOCAL				

COMPUTER ENTRY — PERSON — VEHICLE

FOR IDENTIFICATION DIVISION USE ONLY

NAME: PIERCE, STEPHANIE GAY — FOB: MI

18/ L/M 1/1 R/R 000/000 17/

IDENTIFIERS LISTED BELOW: SEX F RACE W DOB 111951 HT 5'1 WT 120 HAIR BLN EYES GRN SID 61503

FBI 429 211

PROCESSING — BLW — REC — MICRO — 4 35663H

REPORTING OFFICER — REVIEWED

BEST AVAILA

Date Time

ITEM 4: ADDITIONAL WORTHLESS DOCUMENTS—Record multiple worthless documents on a multiple worthless document form and attach as additional pages. Record in the narrative the number of worthless documents written.

ITEM 5: ADDITIONAL PROPERTY—Record no more than four additional items of property in the narrative—and/or use a special report and attach as additional pages.

ITEM 6: ADDITIONAL OFFICERS—List all officers present and identify their involvement with the incident being reported.

ITEM 7: SUMMARY—A short summary is necessary if the narrative is more than one full page in length.

ITEM 8: NARRATIVE—List in chronological order all of the relevant details of the incident and/or elements of the crime or violation.

NARRATIVE

This date I was called to cover a fire inspector @ the 11/ [redacted] station. He was on the west END w/ Δ. She was refusing to give him info AND EVEN IN MY PRESENCE was being very condescending.

I explained that this was merely a citation and all we needed was to verify her identity and she could be on her way. Δ gave me a name/DOB/address. The address did not sound like a residential area.

My radio check showed Δ LKA to be 11020 NW Longview. I asked her why she had not her address and she stated the address is her store.

Δ stated she was on probation AND explained on her rights to record the law w/a being harassed by the police.

Δ refused to sign.

SEP13 A1:59

App. 7

SS 93524

CITATION TO APPEAR IN COURT
IN THE

District Court of the State of Oregon
for Multnomah County

☐ State of Oregon, VS
☐ City of Portland, VS
☐ Multnomah County, VS
☐ Port of Portland, VS
☐ City of Gresham, VS

B 182218
COURT

PIERCE, STORMIE GAY
(LAST) (FIRST) (MIDDLE)
RES ADD 1102 NW LAVELLE PHONE
CITY PORT STATE OR
BUS ADD PHONE
CITY STATE
DOB 10.19.51 HT 5'4 WT 110 EYES GRN SEX F
HAIR BRN RACE WT OPR LIC. OR SOC SEC

YOU HAVE BEEN ARRESTED BY ☐ PRIVATE CITIZEN
(NAME) STEVE DUNCAN ☒ POLICE OFFICER
A COMPLAINT OR INFORMATION ☐ HAS BEEN
FILED AGAINST YOU ☐ WILL BE NO.

ON THE 12 DAY OF SEPTEMBER 19 88 AT ABOUT 1750 M
AT NE HOLLADAY / 4TH AVE YOU DID UNLAWFULLY COMMIT
THE OFFENSE OF FURNISHING FALSE INFO TO POLICE OFFICER
☒ MISDEMEANOR ☐ FELONY ☐ VIOLATION

YOU ARE CITED TO APPEAR IN COURT AT 2:00 M ON THE
4 DAY OF OCTOBER 19 88

X	DISTRICT COURT	JUSTICE CENTER 1120 S.W. 3RD AVE., PORTLAND, OREGON
	DISTRICT COURT	135 W. POWELL, GRESHAM, OREGON

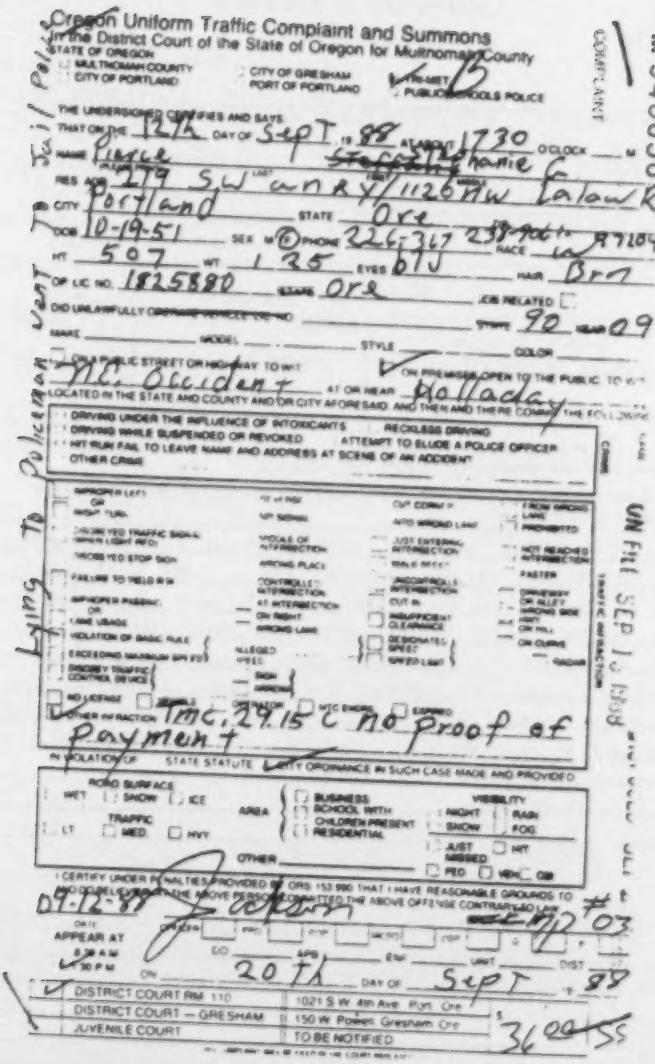
I HEREBY CERTIFY THAT I SERVED A COPY OF THIS CITATION ON THE DEFENDANT ABOVE NAMED

9.12.88 STEVE DUNCAN K81
DATE OFFICER BADGE

READ CAREFULLY

This citation is not a complaint or an information. One may be filed and you will be provided a copy thereof at the time of your first appearance. You MUST appear in court at the time set in the citation. IF YOU FAIL TO APPEAR AND A COMPLAINT OR INFORMATION HAS BEEN FILED THE COURT WILL IMMEDIATELY ISSUE A WARRANT FOR YOUR ARREST.

IN ADDITION YOU MAY BE CHARGED WITH THE CRIME OF WILFUL FAILURE TO APPEAR



Oregon Uniform Traffic Complaint and Summons
In the District Court of the State of Oregon for Multnomah County

STATE OF OREGON
[ ] MULTNOMAH COUNTY
[ ] CITY OF PORTLAND
[ ] CITY OF GRESHAM
[ ] PORT OF PORTLAND
[X] B
[ ] PUBLIC SCHOOLS POLICE

COMPLAINT

M-94888888

Jail Police

THE UNDERSIGNED CERTIFIES AND SAYS:
THAT ON THE 12th DAY OF Sept 19 88 AT ABOUT 1730 O'CLOCK
NAME Finch [illegible] Johnnie F
RES ADD 279 S.W. 4th Ave/1126 NW Lolo Dr.
CITY Portland STATE Ore
DOB 10-19-51 SEX M PHONE 226-347 [illegible] RACE W 97209
HT 507 WT 135 EYES BLU HAIR Brn
OP LIC NO. 1825880 STATE Ore JOB RELATED [ ]
DID UNLAWFULLY [illegible] VEHICLE (DESCRIBED) [illegible] TYPE 90 [illegible] 09
MAKE [illegible] MODEL [illegible] STYLE [illegible] COLOR [illegible]
[ ] ON A PUBLIC STREET OR HIGHWAY TO WIT [X] ON PREMISES OPEN TO THE PUBLIC TO WIT
NE Occident AT OR NEAR Holladay
LOCATED IN THE STATE AND COUNTY AND OR CITY AFORESAID AND THEN AND THERE COMMIT THE FOLLOWING CRIME:
[ ] DRIVING UNDER THE INFLUENCE OF INTOXICANTS [ ] RECKLESS DRIVING
[ ] DRIVING WHILE SUSPENDED OR REVOKED [ ] ATTEMPT TO ELUDE A POLICE OFFICER
[ ] HIT/RUN FAIL TO LEAVE NAME AND ADDRESS AT SCENE OF AN ACCIDENT
[ ] OTHER CRIME [illegible]

Lying To Policeman

UN FILE SEP 1 9 1988

IMPROPER LEFT OR IMPROPER TURN
FAILURE TO OBEY TRAFFIC SIGNAL (WHERE LIGHT REQ'D)
FAILURE TO STOP SIGN
FAILURE TO YIELD R/W
IMPROPER PASSING OR LANE USAGE
VIOLATION OF BASIC RULE
EXCEEDING MAXIMUM SPEED
DISOBEY TRAFFIC CONTROL DEVICE
NO LICENSE
OTHER VIOLATION
FAIL TO GIVE RIGHT OF WAY
VEHICLE OF INTERSECTION
ARRIVING PLACE
CONTROLLED INTERSECTION
AT INTERSECTION
ON RIGHT
WRONG LANE
ALLEGED SPEED
SIGN
ARRIVING
OUT CONTROL
INTO MERGING LANE
JUST ENTERING INTERSECTION
MAKE WIDE
UNCONTROLLED INTERSECTION
CUT IN
INSUFFICIENT CLEARANCE
DESIGNATED SPEED
SPEED LIMIT
FROM WRONG LANE
PROHIBITED
NOT HEADING INTERSECTION
PASSING
DRIVEWAY OR ALLEY
WRONG SIDE
HWY
ON HILL
ON CURVE
OTHER
TRAFFIC INFRACTION
Tmc. 29.15 C no Proof of Payment
VIC ENDS
EXPIRED
IN VIOLATION OF STATE STATUTE CITY ORDINANCE IN SUCH CASE MADE AND PROVIDED

ROAD SURFACE: [ ] WET [ ] SNOW [ ] ICE
TRAFFIC: [ ] LT [ ] MED [ ] HVY
AREA: [ ] BUSINESS [ ] SCHOOL WITH CHILDREN PRESENT [ ] RESIDENTIAL
VISIBILITY: [ ] NIGHT [ ] RAIN [ ] SNOW [ ] FOG
[ ] JUST MISSED [ ] HIT [ ] PED [ ] VEH [ ] OB
OTHER

I CERTIFY UNDER PENALTIES PROVIDED BY ORS 153.990 THAT I HAVE REASONABLE GROUNDS TO BELIEVE AND DO BELIEVE THAT THE ABOVE PERSON COMMITTED THE ABOVE OFFENSE CONTRARY TO LAW

09-12-88 [signature] Officer #03

DATE TO APPEAR AT 8:30 A.M. 1:30 P.M. ON 20th DAY OF Sept 88
GRADE [ ] PROP [ ] INJ [ ] DEATH [ ] DUP [ ] GO [ ] SPD [ ] ENF [ ] UNIT [ ] DIST

[X] DISTRICT COURT RM 110	1021 S.W. 4th Ave. Ptld. Ore	$ 36.00 55
[ ] DISTRICT COURT — GRESHAM	150 W. Powell Gresham, Ore	
[ ] JUVENILE COURT	TO BE NOTIFIED	

Multnomah County Sheriff's Office
HAZARD REPORT

DATE: 9-12-84

OFFICER'S NAME, RANK, & BPST NO.	UNIT OF ASSIGNMENT	CASE FILE #
J. Gerkin Knight #20378	MCDC "E"	N/A
DATE & TIME OF OCCURRENCE	**LOCATION OF OCCURRENCE**	**CENTRAL BOOKING #**
9-12-84 2000 HRS	MCDC Reception	N/A
SUBJECT'S NAME, RACE, SEX & AGE	**RES. ADDRESS**	**RES. PHONE**
Pierce, Stephanie F/W 37 yrs	11020 NW Laidlaw	N/A
OCCUPATION	**BUSINESS ADDRESS**	**BUS. PHONE**
N/A	219 S.W. Ankeny	N/A
WITNESS' NAMES (INCLUDING OFFICERS)	**ADDRESS**	**PHONE**
C/O Betty Elkins #19929	MCDC	248-5074

TYPE OF FORCE USED: FIREARM ( ) MACE ( ) BATON ( ) PHYSICAL (X) OTHER

DESCRIBE IN DETAIL THE EVENTS WHICH CAUSED YOU TO EMPLOY FORCE AND THE NATURE OF THE FORCE USED. ATTACH COPIES OF ANY OTHER REPORTS OF THE INCIDENT.

FORWARD THROUGH CHAIN OF COMMAND TO SHERIFF. THIS REPORT NOT FOR FILE IN RECORDS! DO NOT DUPLICATE.

While booking Ms Pierce she was resisting arrest and uncooperative She had to be escorted to the camera station after refusing [illegible] to the station I placed my right hand on her left elbow and guided her to the camera station after her photo was completed her property was inventoried. Her handcuffs were removed she refused to sign for her property receipt and stated "I'm not doing or signing anything" At this point she turned from the counter and started to walk away from me I secured a hard hold to stop her, and then secured her left arm

SPECIFICALLY DESCRIBE ANY INJURY TO THE SUBJECT OR DAMAGE TO HIS PROPERTY:

None

Jerry C Knight 20378
OFFICER'S SIGNATURE & BPST NO

COMMENTS OF REVIEWING SUPERVISOR: As stated. Not observed

9-12-84
DATE OF REVIEW

[illegible]
SUPERVISOR'S SIGNATURE

WITH AN ARM LOCK C/O FLYNN SECURED HER RIGHT ARM IN A SIMILAR MANNER TAKEN ESCORTED MT. PRICE TO 2802. SHE WAS NOT INJURED HER BOOKING PROCESS STARTED AGAIN AT APPROXIMATELY 0120 HRS AND SHE FINALLY RELEASED AT 0212 HRS.

END OF REPORT

Mult. mah County Sheriff's Office

INFORMATION FOLLOW-UP REPORT

ENTERED BY 7-12-17

RELATED REPORTS: ☐ Incident ☐ Property/Evidence ☐ Accident ☐ Intelligence ☐ Custody ☐ Vehicle ☒ Citation

1. Incident: APPLICATION OF HAIR HOLD

2. Case Number: N/A

3. Location: MCDC

4. Dept. N/A Source N/A

5. Appr. Date 7-12-17 6. Time 2000 7. Occurred Date 7-12 to 9-12 8. Time 2000

9. Premise MCDC

10. FOLLOW-UP REPORT ☐ INFORMATION REPORT ☐

11. Name: PIERCE, STEPHANIE Race G Sex/Race F/W 12. DOB 10-19-71

13. Address: 1100 NW LAUREL PDX OR 14. Phone NOT AVAILABLE

15. ☐ CLEARED BY ARREST ☐ CLEARED EXCEPTIONAL ☐ CLEARED UNFOUNDED

16. SOLVABILITY FACTORS FOR INVESTIGATION — FROM CRIME INVESTIGATION REPORT

NARRATIVE

SUMMARY: APPLICATION OF HAIR HOLD ON MS STEPHANIE PIERCE

MENTIONED: C/O KALCASE #20058
C/O BURNS #19929
MS STEPHANIE PIERCE

ACTION TAKEN: WHILE BOOKING MS PIERCE SHE REFUSED TO BE PHOTOGRAPHED/ SHE HAD TO BE ESCORTED BACK TO THE CAMERA STATION AFTER C/O WAS PHOTOGRAPHED HER PROPERTY WAS INVENTORIED. AT THIS TIME HER HAND - CUFFS WERE REMOVED DURING THIS ENTIRE PROCESS SHE WAS EXTREMELY ABUSIVE AND NON-COOPERATIVE. I EXPLAINED TO HER THAT IF SHE DID NOT CEASE BEING ABUSIVE AND UNCOOPERATIVE SHE WILL BE PLACED IN A SEG-CELL. AT THIS TIME SHE WALKED AWAY FROM THE BOARD I STATION REFUSING TO SIGN HER PROPERTY RECEIPT. SHE WALKED AWAY IN A CIRCLE STATING "I'M NOT DOING OR SIGNING ANYTHING". AT THIS I APPLIED A HAIR HOLD. THEN SECURED HER LEFT ARM IN AN ARM LOCK C/O BURNS SECURED THE RIGHT ARM IN A SIMILAR MANNER WE THEN ESCORTED MS PIERCE TO JAIL AND SECURED HER THERE SHE WAS NOT INJURED SHE WAS RELEASED AT

17. Solvability Factors: ELIMINATED BY INVESTIGATION / DEVELOPED BY INVESTIGATION / REMAINING FOR INVESTIGATION — SUPERVISOR

END OF REPORT

18. Further Investigation to be Conducted By — Estimated Hours for Completion

☐ DETECTIVE ☐ YOUTH OFFICER ☐ PATROL ☐ SIU ☐ SOCIAL AGENCY ☐ OTHER

STATUS: ☐ PENDING ☐ SUSPENDED

19. Reporting Officer: Stark #21018 ☐ NO — Reporting Officer: C. Kalcase #20058 ☐ NO — Date & Time Reported: 7-12-17 2100 HRS — Approved By: [illegible] #2646

Mult. mah County Sheriff's Office

INFORMATION/FOLLOW-UP REPORT

ENTERED BY

RELATED REPORTS: ☐ Incident ☐ Arrest ☐ Custody ☐ Citation ☐ Property ☐ Person ☐ Vehicle

1. Incident: Lt. OF Force
2. Location: MCDC RECEPTION
2. Case Number:
3. Rept. Date: 091285
4. Time: 2030
5. Occurred Date: 091285
6. Time: 2000
4. Dist. / Source:
9. Property:

FOLLOW-UP REPORT ☐
INFORMATION REPORT ☒

11. Victim/Complainant: PIERCE Name: STEPHANIE Middle: RAY
12. DOB: 101951
13. Address: 1030 NW LOVELAND
14. Phone:

☐ CLEARED BY ARREST ☐ CLEARED EXCEPTIONAL ☐ CLEARED UNFOUNDED

15A. SOLVABILITY FACTORS FOR INVESTIGATION

FROM CRIME INVESTIGATION REPORT

NARRATIVE

SIR

SUMMARY: ASSISTING IN THE BOOKING OF MS STEPHANIE PIERCE

WITNESSES: C/O EVANS 1992

C/O KARCHER 2098

MS STEPHANIE PIERCE

VICTIM THEFT: ON 091285 AT APPROXIMATELY 2000 HRS I ASSISTED C/O KARCHER IN THE BOOKING PROCESS OF MS STEPHANIE PIERCE. MS PIERCE REFUSED TO COOPERATE WITH PROCEDURES AND HAD TO BE LED THROUGH ALL ASPECTS. AFTER THE REMOVAL OF HER HANDCUFFS AND THE EMPTYING OF HER PROPERTY, MS PIERCE WALKED AWAY FROM THE COUNTER AREA. MS PIERCE IGNORED THE VERBAL DIRECTIVE TO RETURN TO THE COUNTER NECESSITATING A HAIR HOLD TO DIRECT HER. MS PIERCE'S ATTITUDE FROM THE ONSET OF THE PROCEDURES WAS HOSTILE, AGGRESSIVE AND DEMANDING. SHE WAS ESCORTED TO BOOKING AREA BY MYSELF AND C/O KARCHER. COMPLETION OF THE BOOKING PROCESS HAD TO BE DELAYED WHILE SHE WAS WILLING TO COOPERATE. THIS OCCURRED AT APPROXIMATELY 2120 HRS AT WHICH TIME MS PIERCE REMAINED HOSTILE AND ONLY MINIMALLY COOPERATIVE

RESPECTFULLY SUBMITTED

Solvability Factors Eliminated by Investigation

Developed by Investigation

Remaining for Investigation

SUPERVISOR

Investigation to be Conducted By

Estimated Hours for Completion

☐ DETECTIVE
☐ YOUTH OFFICER
☐ PATROL
☐ SIU
☐ SOCIAL AGENCY

STATUS
☐ PENDING

PLAINTIFF'S EXHIBIT #43
CV-90-417-ST

6 89-0440-01 M.S. ATTACHMENT A APP-44

FULL MUG

NEW TO OUR SYSTEM AT THIS POINT AND ARRESTED ON FELONY CHARGES/STATE MISDEMEANORS INVOLVING SEXUAL CONDUCT/ALL STATE MISDEMEANORS INVOLVING USE/SALE OF NARCOTICS OR DANGEROUS DRUGS, EXCEPT POSSESSION OF LESS THAN AN OZ. OF MARIJUANA.

RECEIVED
FEB 17 1993
CITY ATTORNEY'S OFFICE

INVOLVES:	ADDITIONAL TASKS:
LOCAL CARD	COMPLETION OF DIS SHEET BY TECH
STATE CARD	TYPING BY TECH OF STATE CARD
FBI CARD	TYPING BY CLERKS OF FBI CARD/MUG ENVELOPE/LOCAL CARD/3x5 CARD
MUG PHOTO	
INDEX CARD	

1/2 MUG / or 1/2 mug with state

NEW TO OUR SYSTEM AT THIS POINT AND ARRESTED ON MISDEMEANOR CHARGES/U.S. MARSHALLS HOLDS/SPECIAL REQUESTS BY OFFICERS AND/OR DETECTIVES ON MINOR INFRACTIONS AND ARE BEING BOOKED AS CITE IN LIEUS FOR THE PURPOSE OF OBTAINING FINGERPRINTS AND A MUG PHOTO.

INVOLVES.	ADDITIONAL TASKS:
LOCAL CARD	COMPLETION OF DIS SHEET BY JAIL TECH
MUG PHOTO	TYPING BY CLERKS OF LOCAL CARD/MUG ENVELOPE/3x5 CARD
INDEX CARD (STATE CARD)	

FULL REMUG

WE ALREADY HAVE A MUG PHOTO ON FILE HOWEVER THE DIS HAS NOT BEEN UPDATED FOR 6 YEARS. WE ALSO HAVE A LOCAL CARD IN FILE HOWEVER THEY ARE CURRENTLY BEING BOOKED ON FELONY CHARGES/STATE MISDEMEANORS INVOLVING SEXUAL CONDUCT/STATE MISDEMEANORS INVOLVING USE/SALE OF NARCOTICS OR DANGEROUS DRUGS, EXCEPT POSSESSION OF LESS THAN AN OZ. OF MARIJUANA.

INVOLVES:	ADDITIONAL TASKS:
STATE CARD	COMPLETION OF DIS BY JAIL TECH
FBI CARD	TYPING BY CLERKS OF FBI CARD/NEW 3x5 CARD/NEW MUG ENVELOPE
MUG PHOTO	TYPING BY TECHS OF STATE CARD
INDEX CARD	